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Law, Liberty and Life

BY

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PREFACE

I HAVE been persuaded, perhaps over-persuaded, by the Asia Publishing House to publish a collection of some of the speeches delivered by me, some of my broadcasts and articles written by me at different times. It may be said that all these served a particular purpose and might have excited some interest at the time when they were delivered or published. In permitting them to be collected in a book, I may be rightly criticised of the author's vanity which seeks to give permanence to what is essentially transient.

My only excuse, if there be one, for yielding to the temptation held out by the publishers, is that these speeches and articles do reveal a particular outlook which gives to them a certain coherence and compactness.

All the pieces collected in this book, except perhaps one, are non-political in their character. Practically all of them are of a time subsequent to 1940—after I left the Bar and went to the Bench But I had a political past, and my readers will notice very often an almost nostalgic

hankering for the freedom to give full expression to one's thoughts on the platform and in the press which one has in public life and which is denied to one in the isolation and aloofness of the Bench.

Throughout my political life, my guiding star was communal harmony and the unity of India. I was closely and intimately associated with Jinnah for nearly eight years when Jinnah was a nationalist and the Muslim League represented the advanced left wing of the Muslim community. I parted company with Jinnah when he started evolving the two-nation theory and working for a homeland for the Muslims. Constitutionally and temperamentally I am incapable of being communal in my outlook. I find it much easier and simpler to think and behave as an Indian rather than as a member of a particular community. While I find the differences between us few and not fundamental, the bonds between us, forged by history, by our common culture, by our environment, are intimate and enduring. With this political faith, it is needless to say that the partition of India was a shattering blow and a terrible disillusionment. But I felt that my faith was justified when in our free India—truncated and dismembered but still our India—we set up the ideal of a secular state in which

communalism would be buried for ever.

The only piece included in this book which might be considered as of a political character is the speech I delivered before the Political Committee of the U. N. O. when I had the honour to represent my country before that body. But strictly it is not a political speech. Politics are usually concerned with the affairs of a particular country and rarely deal with fundamentals. My speech at the U. N. O. raised a question of human rights and human dignity. It may have been delivered in connection with the grievances of Indians in South Africa; but its background was the sacred Charter on which the U. N. O. was founded. Although India won a striking victory, its results so far unfortunately have been nil. If anything, the South African Government is more determined than ever to violate the principles and purposes of the Charter.

To the extent that this book deals with law, I have emphasised the fact that the rule of law is the very mainspring of democracy. Respect of and obedience to the law is the hall-mark of a democratic State. *But it is an error to emphasize law without putting a proper stress upon liberty.* Law and liberty are counterparts of each other. Law draws attention to the duties and obligations of the citizen

and the might and power of the State; liberty—the freedom which the citizen enjoys, upon which the State can make no encroachment.

I have always been deeply interested in civil liberties. I remember, many years ago, Pandit Jawaharlal Nehru, our Prime Minister, and myself appearing on the same platform in Bombay to inaugurate the Civil Liberties Union. I think we both made strong speeches: naturally, as we were fancy-free and responsibility of office had not made us realise the difference between the theoretical and the practical, between the ideal and what it is possible to realise in this imperfect world. I do not know about Panditji, but I certainly did not have the prophetic vision which gave me indication of what role I would be called upon to play in connection with civil liberties. That meeting in Bombay would have undoubtedly been considerably enlivened if it had been told that a day would come when Panditji would be the head of a Government which would be passing laws curtailing civil liberties for security reasons, and it would be my duty to define the limits and boundaries beyond which the State could not abridge the freedom of the individual.

In some of the writings, I have got away from Law and Liberty and dealt with some

aspects of life. The art of living is one of the arts which is seldom practised in our country. Both the doctrine of Karma and of Kismet give to life an inevitability which makes it impossible to make of it an adventure. I agree that life, at best, is sordid and often touched with tragedy. But what we overlook is that there are glimpses of great beauty and happiness. If the gods have given to mortals a large measure of tears, they have also given them the gift of laughter. It is these brief glimpses of beauty and happiness that we have to cherish.

The philosophy of escapism has often been condemned : but what else can a man do except to escape for a while into his ivory tower and forget the realities of life ? The question each man has to answer is what ivory tower he will erect for himself. And there I am profoundly of the opinion that that is a question which each man must answer for himself. Each human soul is essentially unique, and in its pursuit of happiness and the seeking for salvation it must tread its own path and find its own solutions to the problems that present themselves. That is why I am a believer in democracy. Because under democracy the worth and value of each individual citizen is recognised and the State is not sanctified to the detriment of individual freedom. When we have decided

to set up a democracy in our country, we should not only think of the governmental machinery but also of the democratic spirit which should pervade all our institutions.

The preface has been longer than I intended. But just as the parent does not like to let go the hand of its child and allow it to walk on to the road full of traffic, so also the author hesitates before launching his book upon the public. But just as the child has to make his way through the traffic, so also the book has to work out its own justification without the help of the author. And so, at last, I will leave this book to the readers.

CONTENTS

PAGE

I

LAW AND LIBERTY

I

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IT GIVES me very great pleasure to inaugurate the Spring Lecture Series for the year 1950. Poona is the home of dialectics. It has produced men of great intellectual stature and it possesses an academic atmosphere in which scholarship can thrive. It is therefore but fit that such a place should hold a lecture series to which contributions have been made by the most distinguished sons and daughters of India. This series was started by Mr. Ranade, one of the greatest Judges our High Court ever had. He was not only a great jurist but he was a social reformer and a man of letters of great repute.

When I was asked to inaugurate this series this year, I realised the great honour that was being done to me, but I hesitated a great deal before accepting that honour because I realised that I was unworthy of that honour. But I ultimately agreed because I felt that I might be able to say something useful on a subject which is of fundamental importance to the country and to its future destiny.

Our Constituent Assembly has met, has deliberated and has given to us a constitution. We are now a sovereign democratic republic. We are free from the foreign yoke and it lies entirely with us to mould and shape our future and to achieve whatever lies nearest to our hearts' desire. Our country is not only sovereign, it is not only a republic ; but most important of all it is a democracy. Democracy is not merely a form of Government or merely the trapping and an outward symbol, it is a philosophy of life. No mere constitution can make the working of democracy successful. In order to do so what we need is the democratic spirit, and it is only to the extent that our rulers and our people are infused with that spirit that democracy would succeed in our land.

What the democratic spirit considers as of the greatest significance is the importance of the individual. There must be a faith in the uniqueness of personality and there must be a constant readiness to permit everyone to experiment with his own life and to work his own way to salvation. The other equally important thing is the supremacy of the rule of law. From the highest to the lowest, whether he is a high born Brahmin or a Harijan, whether he is a Hindu or Muslim, he is gover-

ned by the same law, which makes no distinction between caste or creed, sex or community. The supremacy of the rule of law is only possible provided there is among the people an ingrained respect for law. A democratic people is essentially a law abiding people. But in order that laws should be respected a great responsibility is cast upon the Legislature carefully to consider the nature and effect of the laws it passes. Our Legislatures, whether in the different States or in the Union are sovereign. Within the ambit of their powers they have full and untrammelled legislative capacity. But ultimately it is the party in power that makes laws and in whom the final authority rests. It is therefore for that party to place limitations upon its own power and to be neither ruthless nor dictatorial in its exercise. It must see to it that every law that it passes, although it may do so notwithstanding the opposition of the minority on the floor of the Legislature would have the acquiescence of that minority when it is placed on the statute book. It should only pass laws which are effective and which can be enforced. They should not be in conflict with the opinions so strongly held that they are likely to create a body of conscientious objectors. Nor must they flout the basic principles of human nature

so that disobedience to laws would be easier than obedience. On the other hand, there is an equally great responsibility on the subjects to obey the law. People have every right to criticise a proposed piece of legislation by every means open to them. In the press and on the platform they can agitate against it. They can intimate to the Government how strong the feelings are against it. But once a law is passed it is the bounden duty of the people to respect it and obey it. They have certainly the right to work for its repeal. But so long as that has not been brought about the dissenting minority in the interest of democracy should be as loyal to the law as the majority which was instrumental in getting it passed.

It must not be overlooked that order and security of the State is based on obedience to the law. Public order would be impossible and security would be completely undermined if it was left to individuals to decide whether they should or should not obey and respect a particular law. I need hardly emphasise how essential order and security are to a nascent State and no country needs order and security more than ours. We have only recently come through the turmoils of partition and the troubles across the frontier are not yet at an end and within our own frontiers we have enemies

who are waiting for disorder and disruption in order that they should seize the reigns of power. I entirely agree that even in the midst of clash of arms or even where the most dire emergencies threaten the State, the principles of natural justice should not be silenced. Even laws divorced from principles of justice are laws in the technical sense, in the sense that they have received the imprimatur of the Legislature. But these are laws without the moral background which compel respect for them.

It would not be out of place certainly in the context of modern times to sound a note of warning against the danger of emergency legislation. Such legislation has always the tendency of by-passing the ordinary law and the ordinary tribunals of the land and it enables the executive to resort more and more to special and extraordinary powers. There is a further tendency for the emergency never to pass and the emergency legislation which owed its birth to a temporary necessity becomes a permanent feature of the statute book. The executive can always see clouds on the horizon and every cloud is capable of bringing about a storm.

Democracy proceeds on one fundamental axiom, that absolute power is corrupting and it should not be reposed in one body of men.

Therefore a democratic system of Government always contains limitations upon absolute power. Politically we find that in a democratic country there is always an opposition which criticizes the day to day administration of Government which puts forward the opposite point of view and which is prepared when the time arrives to carry on the Government. Elections also are another limitation. Even the party in power has to depend for its power upon the votes of the people. The policy it has pursued while in authority has to be justified before the electors and a mandate has to be obtained for a continuation of its authority. Legally the limitations upon absolute power are the declaration of certain fundamental rights which are beyond the power of the legislature to affect and the separation of powers.

In England the Parliament is supreme. There is no law which it cannot enact. There is no right which it cannot destroy or impair. In our country it is our written constitution that is supreme. Any law which violates the fundamental rights is ultra vires of the legislature and void. In England every Act passed by Parliament is constitutional. Its constitutionality cannot be challenged; while in India every Act can be so challenged. It is this important feature of our Constitution which

gives to the Judiciary its pre-eminent position. Every fundamental right which has been embodied in the Constitution is justiciable. It is for the Judges to say whether an Act is ultra vires or not, whether a fundamental right has been violated or not. The Judges are therefore the interpreters of the Constitution and in a sense the makers and moulders of the Constitution. It is the spirit in which they will perform their task that the Constitution will take its ultimate shape and form.

It has been said that our Constitution gives fundamental rights with one hand and with the other hand takes them away, by circumscribing the rights by innumerable exceptions and provisos. That to my mind is a very facile criticism. Article 19 of our Constitution deals with right to freedom and it enumerates certain rights regarding individual freedom. These rights are freedom of speech and expression, freedom to assemble peaceably and without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India, freedom to acquire, hold and dispose of property and freedom to practice any profession, or to carry on any occupation, trade or business. These are important and vital freedoms which

lie at the very root of liberty. It is true that in the sub-clauses that follow limitations are placed upon these freedoms. With regard to freedom of speech and expression past and future laws are saved which relate to libel, slander, defamation, contempt of Court or any matter which offends against the decency or morality or which undermines the security of, or tends to overthrow, the State. It will be noticed that these limitations are objective in their nature and it is for the Judiciary to decide whether the limitations conform to the objective standard laid down by the Constitution. Similarly the legislature is given the right to impose reasonable restrictions in the interests of public order on the right to assemble peaceably and without arms. Whether a restriction is reasonable or not is not left to the determination of the legislature or the executive, but it is again an objective consideration which has got to be determined by the Court of law. Only such a restriction would be reasonable as the Court thinks is reasonable. Similarly the right to form associations or unions may be limited by reasonable restrictions in the interest of public order or morality. The right to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to acquire, hold and dispose

of property can all be limited by reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Similarly, the right to practice any profession, or to carry on any occupation, trade or business, may be cut down by reasonable restrictions in the interests of the general public. It will be realised therefore that the Constitution has not left it to the party in power in the legislature or to the caprice of the executive to limit, control or impair any fundamental right. Any limitation of a fundamental right has to be justified by the legislature before a Court of law. These are indeed wide powers given to the Courts of law under the Constitution.

Similar powers are given to the Supreme Court in America and it is a matter of history that the Supreme Court has used these powers in such a manner as to revolutionise the American Constitution. The American Constitution can only be altered by amendments effected in the manner laid down under the Constitution. The framers of the American Constitution never contemplated any other mode by which the American Constitution could be altered But the Supreme Court by the manner in which it has interpreted the Constitution has brought about radical changes in the Constitution. It has

brought about what has been termed nationalization, by transferring power from the States to the Congress and it has practically made the President of the American Republic the supreme authority in the land, a consummation which was never dreamt of by the men who drafted the American Constitution. It has also given the widest interpretation to the famous clause in the fifth and fourteenth amendment that no person shall be deprived of life, liberty or property without due process of law. This interpretation has given the right to the Supreme Court to test the validity of every law passed and to declare it to be ultra vires if in its opinion the law is unreasonable or arbitrary. The framers of our Constitution advisedly did not incorporate a similar provision in our Constitution. What article 21 says is that no person shall be deprived of his life or personal liberty except according to procedure established by law. What the difference is between "due process of law" and "according to procedure established by law" our own Supreme Court is busy considering and it is not for me to hazard an opinion. The powers of the American Supreme Court are so wide and immense that one famous Judge observed that there is no restraint upon the Supreme Court except self-restraint.

I do not suggest for a moment that our Supreme Court will follow on the same lines as its counterpart in the United States. We have always taken the view that Judges are not the makers of policy and they have no concern with policy. Nor have the Judges arrogated to themselves the rights of a third chamber which would veto legislation passed by a duly constituted legislature of the country. The duty of the Judges is loyally to interpret the Constitution. But however loyal the Judges may be to the written word of the Constitution, judicial interpretation must play a very big part in every democratic constitution, and it must necessarily act as a corrective to the legislature and the executive.

The other check on absolute power is the separation of the functions and powers of the legislature, the executive and the judiciary. The legislature makes the law, the executive carries it out and the judiciary interprets it. It is absolutely essential to keep this separation intact, and to keep the line that demarcates it clear and distinct. The tendency in the modern States is to make the executive all supreme. It trespasses both upon the power of the legislature and of the judiciary. Human affairs are becoming so complex that the legislature more and more merely enunciates the general

principle as embodied in the law that it passes and leaves the details to be filled in by the executive by notifications, rules, orders, etc. The average and uninitiated person does not realise to what a large extent Government makes laws and performs the function of the legislature. To a certain extent it may be necessary that Government officers should perform this function, but it is equally essential that the legislature should keep a vigilant eye on these essays of the executive in law making.

The more dangerous tendency of our times is to vest the executive officers with judicial functions. The separation of powers to which I have referred makes it incumbent that rights should be determined and liabilities imposed by the judiciary on a proper interpretation of the laws. If it was left to the executive to interpret the laws which they have to carry out, the most important democratic corrective to the power of the executive would be lost. The best of executive officers is the instrument of a policy. He has to administer the country in pursuance of that policy and if he sits as a judicial officer to determine the rights of the subject under the law, it is impossible to believe that his decision would be completely divorced from that policy. On the other hand the Judge has no policy to carry out. He is

only concerned with the law as he finds it and his business is to interpret it and to give effect to it. This dangerous tendency can be seen from the powers given to revenue tribunals to decide important questions and oust the jurisdiction of the Courts. Even where such bodies have to be set up, it is necessary that a final right of appeal should be given to the Civil Court so that ultimately the subject can obtain a judicial decision. It has often been said that there are administrative tribunals in France and they have worked very well. But as has been pointed out by well known authorities in England, especially by Allen in his "Bureaucracy Triumphant", the constitution of administrative tribunals without there being a proper administrative law undermines the rule of law which is the very foundation of a Democratic Government. In France administrative law has grown with the centuries and administrative tribunals function on the principle that the State is an honest man and administrative law is administered more for the benefit of the subject than of the State. I need hardly point out that there is no such thing as administrative law in this country. Therefore, a situation is developing here by which Civil Courts are being deprived of their powers and the subject is left at the mercy of administrative tribunals

without there being any special body of law to help him if he wants to assert his rights against the State.

One of the most difficult aspects of the subject is the line that must be drawn between law and liberty. Man prizes his liberty more than anything else in the world. Every man is unique, unique in his individuality and personality and he wants scope for the development of that unique individuality and personality. He wants to think his own thoughts, dream his own dreams and tread his own path. The main function of a democratic form of Government is to safeguard liberty. But there is an age old conflict between the State and the individual, between law and liberty, between security and freedom. Where is the line to be drawn? To what extent is the State justified in controlling or curtailing individual liberty?

The basic principle I would suggest is that the State is not concerned with individual morals or sin. These are matters of individual conscience and they must be settled and determined between the individual and his Creator. Every man must make his own peace with his God in his own way. But the State is concerned with the good of society. It is interested in the difference between what is social and what is anti-social. Liberty must be control-

led in the interests of society, but the social interest must be over-powering which would justify the impairment of individual liberty. Social interests are not the interests or prejudices of the majority, for even the liberty of a single individual is precious and must be safeguarded against the violent opposition of an over-powering majority. The burden must always be upon those who make encroachments upon liberty to justify them. Liberty can never be on the defensive; it is authority that must always be prepared to be challenged.

It may be said that the final objective of law is to make society perfect and to bring about social happiness. Men must be prepared to sacrifice their individual liberty for those glorious ends. But for nothing short of this, for no other consideration can liberty be called upon to make a sacrifice.

I am not suggesting a policy of *laissez faire* on the part of the State. That doctrine has become archaic and must be consigned to the limbo of worn out ideas. Our State must not merely be a Police State; it must be a Welfare State. It must actively work for the welfare and betterment of the citizens. But the permanent welfare of the citizen can never be advanced by denying to him a choice of the path he will follow in the pursuit of happiness.

The quality that there is in individual choice and personal experience is completely absent in a decision that is superimposed from above. The welfare of society as a whole that the State must aim at must not be brought about by a denial of individual liberty. Liberty must only be controlled to the extent that its exercise becomes anti-social or undermines the security of the State.

The right to express opinion, however critical it may be, of government or of society as constituted is one of the most fundamental rights of the individual in a democratic form of government. This right may take the shape of the spoken or the written word and it may be expressed individually or in association. Democracy can only truly function when there is full scope for the critical spirit, because a Democratic Government never acts unless it has understood and appreciated the different aspects of a question or a problem. A facile concurrence with the policy of the rulers is not necessarily a sign of patriotism or loyalty. It more often betrays a lack of independence of thought and expression and thus the drying up of the very springs which should perpetually supply vigour and force to democracy and keep it healthy and strong. The question as to how far independence of opinion should be tolera-

ted is by no means easy to decide. If security of the State is of paramount consideration, then opinion which is subversive or likely to undermine the safety of the State may not be permitted a free and unrestricted circulation. But law makers should always remember that suppression of opinion is not necessarily its disappearance. Such opinion has a tendency to go underground and to be held more fanatically and in larger numbers. To Rome Christian opinion was highly dangerous to the might and majesty of the Empire. Its attempted suppression only resulted in Christianity becoming a world religion. It may be said that this was so because Christianity represented the truth. But who shall say among the opinions current today which possesses the genuine and authentic hallmark and which is merely spurious and a snare for the unwary? It is only the verdict of history that finally settles the issue and it would be audacious if not impertinent to anticipate that verdict.

There are two real safeguards that liberty has. One lies in the fact that the validity of an executive act can be challenged in a Court of law. The other must lie in the eternal vigilance that the public must show in preventing executive or legislative encroachment upon liberty. It is a mistake to think that if the

liberty of an individual or of a section of the people is sacrificed the majority is unaffected. Every time there is a trespass upon the citadel of freedom its very foundation is weakened and more and more such trespasses are tolerated the weaker becomes the whole edifice till one day it collapses giving place to dictatorship or fascism and democracy lies in ruins.

2

DUTIES AND RIGHTS OF FREE CITIZENS

2

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In my opinion this is a very unique and distinguished occasion—the celebration of the Silver Jubilee of the Indian Law Society. Distinguished lawyers have served as its Presidents—my friend Dr. Jayakar one of our greatest jurists who is its present President; Mr. H. C. Coyajee that veteran lawyer, and Sir N. G. Chandavarkar that great Judge who have been its past Presidents. But the Society owes everything to its indefatigable Secretary—Principal Gharpure. I do not know whether there is something in the atmosphere of Poona or something in the inner springs of his fine nature but he seems to have captured the secret of perrenial youth and his devotion and enthusiasm for the cause of the Society never seems to abate. To be called upon to preside over this function is a very great honour indeed and I deeply appreciate it.

The Society's greatest achievement is the Law College which it started in 1925. Lawyers are generally considered to be very selfish—out to make money at the cost of oppressed and

down-trodden litigants. Somehow the Society attracted to itself a band of self-sacrificing lawyers who generously gave to it their valuable time and services. Without a building, without funds, but with a great ideal before them, these men started the Law College. Their ideal has been fully justified, and to-day the College has become the finest institution of its kind in India and is housed in a building which is the last word in comfort and luxury. The proudest man to-day must be its Principal—Mr. Gharpure—who has been associated with the College through all its vicissitudes, and who has seen it growing from nothing into a very fine and noble institution. Like Vergil's Aeneid he can justly say, "Magna Pars Fui"—I have played a great part in the making of this institution.

For a moment I should like to consider the role that Law should play in our society. We have just achieved freedom and independence through, on the whole, a peaceful revolution. But we cannot ignore the fact that there has been a revolution and the revolutionary process is not yet over. Revolution has an inevitable tendency of creating dictatorship. Those in power wish to achieve things, and achieve them as quickly as possible. The democratic method is a slow and tedious method,

and while democratic slogans are oft repeated the spirit underlying democracy is apt to be forgotten. The revolution which was out to achieve liberty in the abstract in its zeal and enthusiasm tends to overlook the liberty of the individual. It is at times like these that the majesty of the law should become manifest. It should point out to the Executive what is its rightful domain, and like the angel with flaming swords prevent it from overstepping it. There is an age-long conflict between the security of the state and the liberty of the subject. It is for law to see that in the name of security there is no unjustifiable invasion on the liberty of the subject.

I have been speaking of Law in the abstract. But Law is administered by the judiciary. And it is to the judiciary that the subject must look as its protector and champion against the Executive. The Judiciary does not make laws —it takes them as it finds them. It does not lay down policy—that is for the legislature. But it is in the spirit in which laws are administered that the judiciary has a compelling voice. A Judge may be, as Lord Atkin once said, more executive-minded than the executive. Or, on the other hand, his one great anxiety might be to contain the actions of the executive as strictly as possible within the four corners of the

law so that the liberty of the subject is as little affected as possible.

Democracy without a strong and independent judiciary is impossible. Democracy does not merely mean the rule of the majority. It also means the respect of the majority for the rule of law—its readiness to respect the decisions of the Courts when they go against their wishes and dictates. The democratic nature of the State is not to be judged so much from the influence and power that a popular Executive wields as from the independence of the Judges and the respect in which they are held. The rule of law can only prevail provided the judiciary fearlessly compels the Executive to function within the law.

You may say that what I have been telling you is axiomatic—almost elementary. But there are times and occasions when elementary things must be repeated and reiterated. There is a dangerous tendency aboard to minimise the importance of the judiciary, and undermine the position of the Judges. Their salaries are to be reduced, their vacations to be cut down. The judicial office is no longer to be an office of dignity and reasonable leisure to which every member of the Bar can legitimately aspire. How unwise and almost suicidal such a policy would be it is unnecessary for me to

emphasize to this audience. Corruption is already rampant; but so far only the stream is fouled. Any attempt at tampering with the status of judges would be to corrupt the very fountain.

When the British transferred power to us they left us many legacies—some good and some very bad. Among the good the first and foremost was the administrative unity of the country. We did not succeed in preserving and maintaining it. India was partitioned, and a halt has not been cried to the fissiparious tendencies which are visible in every direction. The other legacy which we have inherited and which will always reflect credit on the British rule is the system of administration of justice. In my opinion we should hold on to it—strengthen it and fortify it. The people have learnt to trust and respect the Courts of Law. Whatever else may be unstable and transient the Courts have been a beacon light to the citizen in the surrounding gloom.

Changes are in the air and the administration of justice cannot hope to escape the attention of critics who are imbued with revolutionary zeal. One suggestion that is put forward is that English should no longer be the language of the High Courts. The desire to substitute the national language for English is natural and

commendable. But it must be a language which has the same unifying force that English had and has throughout the country. But any attempt to substitute different regional languages in place of English would only result in judicial chaos. The bond that connects the different High Courts would be snapped. To-day the far flung High Courts have a great deal in common. To a very large extent they administer the same laws expressed in the same language. They respect each other's judgments. And till the other day we had the mighty edifice of the Privy Council–of which Dr. Jayakar is so distinguished a member—clarifying all legal doubts and stating the law for the whole country to follow. The Federal Court has now taken the place of the Privy Council. We should not be in a hurry to throw away this judicial unity. Let us plan slowly and deliberately for the future. Let us translate our laws into the national language. Let us train up the Bar to plead in that language. And then we will have judgments delivered in that language which will have the same efficacy all over the land which judgments in English have to-day.

There was one blemish which the British system of administration undoubtedly had and which we must immediately correct and rec-

tify. Judges discharged executive functions and members of the executive discharged judicial functions. This was all wrong. The mentality, outlook and equipment of a Judge are entirely different from those of an executive officer. The two roles should never be allowed to combine. And our Government is to be congratulated on having decided to separate the judiciary from the executive. A distinguished Committee has already reported on the subject and only its conclusions remain to be carried out.

I should like to say a few words to the many young men and women in this audience who are studying law and who are going to adopt the legal profession. The legal profession is a great and noble calling, and it is a learned and liberal profession. Remember always that it is a profession—it is not a trade or business. The distinction between the two is deep and fundamental. In business your sole object is to make money. You owe no duty or obligation to anyone except to yourself. You determine the means to achieve your end—and there are no standards to limit or restrict your actions. In a profession the making of money is merely incidental. You have traditions to which you have to be true. The means have to be scrupulously clean. Like an artist there has to be a passionate desire to attain perfection.

And service to society and your fellow men has to be the dominant motive underlying your work.

The study of law should be a part of liberal education. The study of law does not merely mean the study of statutes or text books by learned authors or decisions given by learned Judges. You must try and understand the spirit underlying laws. You must look at laws in their true perspective. You must observe the gradual development of society and how society has moulded laws and how laws have moulded society. You must have a historical sense. Law without a historical background is a dry, uninteresting, uninspiring study.

You must also understand how law and liberty have marched together. Law has never circumscribed true liberty. Liberty is complete and unfettered freedom of action within the law. Outside it is either licence or anarchy and chaos. That is why you will always find that in the van of every struggle for freedom there are lawyers, because they realize that law has no meaning unless it is supreme in a free society. The rule of law presupposes the liberty of the individual so long as he respects and obeys the law.

A great lawyer must also be steeped in

literature. The most important stock-in-trade of a lawyer are words. He must know how to use them with precision. It is not enough that a lawyer should have knowledge of the law—he should know how to clothe that knowledge in graceful language. A deep study of literature gives one a knowledge of the world, an insight into human motives and a working philosophy of life. It also teaches one the magic and beauty that lies in words. Some of the greatest English Judges have been great literary artists. To give only a few examples—you have Lord Macnaughten, Lord Sumner, and in recent times Lord Macmillan. Read one of their judgments and you feel you are reading a page out of literature.

Law also is a great discipline for the mind. It teaches you how to think clearly, precisely and accurately. Every word has its definite meaning and must find its proper place in its own context. Verbosity and diffuseness are foreign to a well-trained legal mind. Such a mind is essentially logical and has the courage to face the results of its own mental processes and not hide them under a cloud of rhetoric and declamation.

You will hear a great deal of criticism from the uninitiated public about the great and noble profession which many of you are going

to adopt. You will be told that it is the duty of the Advocate to make black appear white and white black. You will remember the famous answer that Johnson gave to Boswell when he asked him what he thought of an Advocate supporting a cause which he knew to be bad, and Johnson's answer was that the Advocate did not know it to be good or bad till the Judge determined it. The Advocate must do his best for his client. He is not called upon to pass judgment upon him. That is left to the man on the Bench. But in fighting for his client an Advocate owes a duty also to the Court. Great advocacy is not only fearless but also fair. Administration of justice is made possible not only by a fair and impartial Judge but also by a courageous and upright Advocate.

That brings me to the end of my address. In its 25 years of existence the Indian Law Society has deserved well of the country. It has spread the knowledge of law and has helped to turn out brilliant young men who are serving their country in different capacities. I wish the Society greater success and even higher achievements in years to come—and to Principal Gharpure I wish that he will continue to show the same enthusiasm and devotion for the cause which he has so truly made his own.

3

JAWAHARLAL NEHRU : A PORTRAIT

3

JAWAHARLAL NEHRU: A PORTRAIT

ONLY nations that are indeed fortunate find proper leaders when there is a crisis in their history. England during the two great wars found Lloyd George and Winston Churchill to lead her and whatever shortcomings these two leaders might have had there can be no two opinions that they successfully led their country to victory. Our country has been no less fortunate. The struggle for political emancipation was planned and carried through to success by Mahatma Gandhi. To overthrow the British Empire from its entrenched position seemed at one time an impossibility, but the miracle was achieved by the great doctrine of non-violence which Gandhiji preached and practised and which he forged into a political weapon more powerful and more decisive than all the arms and armaments which modern civilization has invented for the destruction of mankind. The great work of Gandhiji came to an end with the achievement of independence. He did not live long to see what use we would make of that independence and how the destinies of the

country will be shaped and moulded when it was freed from the thraldom of an alien power. The problems that faced the country were so immense and so terrifying that the State might have easily foundered on the rock of chaos and anarchy if a proper successor had not been found to carry on the work initiated by Gandhiji. It was the foresight, wisdom and statesmanship of Mahatmaji that led him to nominate Pandit Jawaharlal Nehru as his political successor and no better or happier choice could have been made for the office of the first Prime Minister of free India than that of Panditji.

More than anything else we needed a leader who had an abiding faith in the main objective which the country placed before itself, viz., the establishment of a secular democratic State. No one is more truly secular in his outlook and upbringing than Panditji. Communalism or sectarianism of any brand or variety is anathema to him, and he has the rare gift of studying problems and assessing personalities on their true merits unbiased by any extraneous considerations. Gandhiji was alive for some time to stem the tide of communalism which swept over the country after partition, but the tide had not been completely stemmed when he was assassinated and there was every danger of India following in the footsteps of Pakistan

and becoming a reactionary theocratic State if Panditji had not been at the helm of affairs to set his face against any movement which gave prominence to or emphasised religion or community in the affairs of the State.

No one is also more democratic in his outlook than Panditji. Although an aristocrat at heart, understanding and appreciating the good things of life and with a devastating contempt for everything which is mean or base, he understands the problems of the common man and realises the dignity of the individual. One of the great problems of modern civilization is how to adjust the conflict between the State and the individual. The State must be strong and powerful and must be in a position to put down all tendencies which undermine or endanger it. As against this the liberty of the subject and his right to live his own life must also be respected and the true democrat must find a solution and a compromise between these two conflicting points of view. Although a believer in the supremacy and sovereignty of the State, Panditji never permits himself to forget that the juggernaut of the State should not crush and trample upon the inalienable rights of the individual.

Panditji realises that political democracy by itself is a meaningless slogan unless it is

accompanied by social justice and economic freedom. To the starving millions of India, political freedom is merely a luxury. The real necessity is food, clothing and housing. Unless the State assures these bare necessities of life to the citizen, however democratic the State might be in its political complexion, the State would undoubtedly fail in discharging its obligations. Today in India there is a sharp conflict between capitalism on the one hand and labour and socialism on the other. But Panditji realises that without subscribing to any of the isms the most important problem that the country has to face is the problem of production. He also realises that complete nationalisation of industries at this stage is not a practical possibility. The State is not equipped to run all the industries and produce satisfactory results. The only other alternative is to induce capital to come forward and help the State in carrying on vital industries and producing more and more for the good of the people. Fortunately, Panditji's political past is of considerable help to him at this juncture. He has always been a socialist at heart and has never sided with the view that the prosperity of the State depends upon a few enjoying the good things of life while millions merely play the role of hewers of wood and drawers of water. There-

fore if for the time being he does not go full steam ahead to carry out his socialist projects, he is never looked upon with suspicion by the common man as a friend and ally of reactionary capitalists. Differing from his Guru Mahatma Gandhi, he has also believed in industrialization of the country. He is conscious of the vast potential resources of the country and he wants to harness all these resources for the good of the people. He was responsible for setting up the Five Year Plan Committee of which he was the President, and that Committee surveyed various avenues which could result in India becoming a modern progressive country, and now that he is in power he is anxious that all the modern inventions which science has been responsible for should be introduced in this country to ameliorate the lot of the worker in the factory and the agriculturist working in the farms.

While we were a dependency of the British Empire we had no international status or position whatsoever. Our representatives used to attend different conferences, but it was well known that they raised their hands at the behest of the British Government. I well remember how agreeably surprised the delegates of the different nations of the United Nations Assembly were when in 1946 the Indian Dele-

gation appointed by Pandit Jawaharlal for the first time really represented the views of the country and took up an independent line on every issue that came before the Assembly. Therefore if India was to play her proper role in the Councils of the Nations and exercise her influence as the leading Asiatic State, it was essential that after independence India should be led by statesmen whose interests were not merely parochial but who had an international outlook. Panditji was admirably suited for this role. Although a true and ardent nationalist he always thinks of his country in the context of world affairs. He not only wants India to assume the leadership of Asia, but wishes her to play a decisive role in European and American affairs. He feels that India has a definite contribution to make to the solution of world problems. He has scrupulously avoided taking sides either with the Western or Eastern bloc, but he is conscious of the fact that peace like war is indivisible and it will be difficult for India to keep out of any conflagration that might be started by a clash between the two rival blocs. Therefore he has been emphasising the importance of fear and suspicion being removed from the minds of the nations in order that there should be universal co-operation for the betterment of humanity.

Few statesmen have been received with such a warm-hearted cordiality as our Prime Minister in the United States of America. It is not so much the State functions and the official hospitality which has been a striking feature of his tour. It is more the spontaneous enthusiasm of the common man in America at seeing and hearing the Prime Minister which is so significant a feature of his visit to the United States. The common man finds in him the embodiment of all his hopes and aspirations for an enduring peace and a final end to conflicts, hostilities and bitterness between the nations.

One of the most brilliant pieces of statesmanship to the credit of Panditji is the solution he brought about with regard to our relations with the British Commonwealth. Throughout his political life he was the staunchest opponent of the political connection between England and India. He had even fought against his own father who in the famous Nehru report was prepared to be content with dominion status for his country. But when the time came for the final decision he realised that the ties between England and India were too many and too close to be completely severed and therefore while insisting upon India being completely independent and being no

longer under the Crown, he agreed to remain in the Commonwealth as a republic recognising the Crown as a symbol which unites all the Commonwealth nations. Constitutional Pandits were aghast at a compromise which did not fit in with any of the accepted formulas known to constitutional law. But revolutionary times and revolutionary thought needed a revolutionary solution and Panditji found one which was consistent both with the dignity and status of his country and with the practical realities of the situation.

We are also fortunate that Panditji should have as his Deputy Prime Minister Sardar Vallabhbhai Patel. The two constitute an admirable team. They are entirely unlike one another. Their outlook and mental set up is entirely different and yet they are complementary to each other and when combined and acting in co-operation they provide all the qualities that are necessary to lead and stabilise a young nation. Sardar's hard-headed realism is a corrective to the idealism of Panditji. Sardar's dry and matter of fact speech points the practical lessons which are to be learnt from the moving eloquence of the Prime Minister.

Panditji has a unique personality which has charmed and fascinated everyone who has come in contact with him. It is a personality

which has a marked duality in it. Educated at Harrow and Trinity and the embodiment of Western culture, he has still made the most violent onslaught on the corroding influence of England in this country. Aristocratic to his finger tips, refined and cultured in all those things which make life gracious, he has been prepared to live the life of the greatest austerity and has spent no less than seven years in prison cut off from everything which he holds dear. He has the famous Nehru temper. He can get furiously angry with inefficiency and hypocrisy and yet the anger can pass away like a cloud and he can break out into a smile which is irresistible in its appeal. Socialist and democrat in the present context he is compelled to recognize the importance of capital and the enforcement of public security.

On his 60th birthday when he looks back upon his life he must feel that he is a very happy and proud man. The long and painful struggle of India's emancipation is over. The throes of birth through which India had to pass have also mercifully come to an end. There are undoubtedly difficult and vital problems still facing the country, but he knows that he can face those problems with a united country at his back and with a people following him who have confidence in his leadership.

4

GANDHIJI IS NO MORE

4

GANDHIJI IS NO MORE

A GREAT and terrible calamity has overtaken us. The father of our nation, and the architect of our freedom has gone away from our midst. His wise counsel, his guiding hand, his all-embracing love are no longer there to assist us. His precious life was brutally and violently brought to an end by an act of fanaticism and hatred, qualities which he spent all his days in trying to eradicate. It is a cruel irony of fate that the kindest, the gentlest and the noblest of men should have died a violent death.

Much blood and tears, many prayers and sacrifices, innumerable acts of courage and heroism have gone to the making of our freedom. But Gandhiji was the supreme architect. He shaped and fashioned our destinies. He found India a Dependency of a great Empire. He found the people disunited, demoralised and dispirited. He set to work and within a generation made one of the most powerful nations in the world to abdicate her Empire, freed the people of India from fear and gave

them self-respect, and saw the tricolour proudly flying in place of the Union Jack.

Before his time public life was dominated by practical politicians, men of the world who understood human strength and human weakness, who saw in the struggle for freedom a political fight to be fought with political weapons. With his Mantra of truth and non-violence he revolutionised all this. He elevated the political struggle to a moral plane. Freedom suddenly began to have a spiritual content. He was not fighting for power, he was not fighting for loaves and fishes of office: he was fighting for the very soul of the nation. And his greatness lies in this: that he made us re-discover our soul. He made us conscious of our great heritage, he instilled in us a sense of pride and dignity, and re-kindled in us the burning flame of patriotism.

It required great courage to preach non-violence to a world brought up on violence, and to stand up for truth in an age of diplomacy to which equivocation was the greatest virtue. But the gospel of Gandhiji was not intended for India alone. It was for the whole world. In that sense Gandhiji was a great internationalist. He realised that the world was suffering from what seemed to be an incurable malady. It had gone ahead with scientific

progress ; it had conquered the forces of nature ; it had achieved supreme heights in material comfort and luxury. But spiritually and morally it had woefully lagged behind. Gandhi-ji offered a cure and a remedy to a weary and disillusioned world. Against the materialism of the West he held out the spiritualism of the East. Like Christ of old he called upon all to give up their power and possessions and follow him, not to a worldly glory or worldly rewar-ds, but to the kingdom of the spirit which alone can satisfy the soul of man.

We are living in the atomic age. The atom bomb haunts us. The next war may see the end of civilization, and the next war seems to be around the corner. Gandhiji was the only man who offered an alternative to the atom bomb. He said something which by its very simplicity was startling and breath taking. Love all living beings, including your enemies. All religions had taught this, but we needed a new prophet and a new message. But like a prophet Gandhiji did not merely show the way, he followed it and took with him millions of his fellow men. His philosophy of passive resistance was based on two concepts—non-violence and the abiding faith that every human being has a moral sense to which ultimately a successful appeal can always be made. In

South Africa he fought General Smuts and in India British Imperialism with that powerful weapon—with the results which are recorded in some of the most inspiring pages of history.

Freedom is an empty word unless we realize that it is not an end in itself but only a means to an end. On 15th August we hoisted the National Flag, we sang Vande Mataram, we congratulated ourselves on having won a bloodless victory against the mightiest power in the world. But we were not as happy as we might have been. Our joy was tinged with sorrow. The unity of India had been disrupted, the country had been partitioned, and brother had been separated from brother. One can imagine the anguish that Gandhiji must have suffered—he who had always worked for Hindu-Muslim unity and determinedly set his face against the two-nation theory. But he accepted the compromise in the hope that in the fullness of time the separated brother would come back to the family fold. But partition far from solving the communal problem, accentuated and aggravated it. It seemed that tide of communal frenzy would sweep over the whole land and submerge the newly-born state. Then Gandhiji rose to heights of grandeur and nobility unsurpassed even by him. Like Canute of old he called

upon the waves of hatred, and madness to halt—and unlike Canute he succeeded. In Calcutta and Delhi he defied fanaticism and communal rancour and bitterness, and in a world that had gone insane he remained the one sane man. He realized that whatever Pakistan might do, if India was to become strong and powerful, it must become a secular democratic state. He saw the danger of Hindu revivalist movement and the setting up of a theocratic State. He refused to countenance the possibility of millions of Muslims in the Indian Union becoming aliens in their own native land He had opposed partition—he also opposed the transfer of populations. With an unerring instinct he understood that Hindus and Muslims had lived together for centuries in the villages and towns of India and any attempt at tearing them apart would only result in a bloody civil war. He saw that modern India was what the Hindus and Muslims had made, and that Indian culture was the result of the blending of the two mighty streams of Hindu and Muslim thought. India without Muslims was to him unthinkable. They were as much the sons of the soil as the Hindus, and the same blood ran in their veins. Together and hand in hand they had marched through the vicissitudes of Indian History, and

mere differences in religion did not make them into different nations. Therefore he wisely said that both Islam and Hinduism would be weakened if the historic bond between the two communities was broken.

We are men of little faith, and we have ceased to believe in miracles. But even in this material age men who are moved by the grace of God can control the forces of evil and restore peace and concord where the worst passions had been let loose. By his fast in Calcutta Gandhiji brought the two communities together. By his recent fast in Delhi he struck a mighty blow at the forces of reaction and communal bitterness and hatred. Unfortunately he did not live to see the full and lasting results of his action.

Gandhiji's power lay in his gentleness and in his deep understanding of men. He was neither in the Congress Working Committee nor was he a member of Government. And yet no dictator could have wielded greater influence than he did. His worst enemies and his stoutest political opponents, when they met him, felt that they were in the presence of greatness. His toothless smile mesmerised them, and they went away more often than not, converts to his point of view. In all history there is no phenomenon so rare and so

significant as the prayer meetings of Gandhiji. An old man, small and slightly built, sat before a congregation of few hundred people. Prayers were recited from different Scriptures. And then he commented on the political questions of the day. And that voice was carried to the length and breadth of India, and to all parts of the world. And that voice shook Governments, reversed policies, and made the mighty shake in their seats. It was only Gandhiji who could have brought about a reversal of the policy of Controls. Whatever its economic aspect, he realized that they were the cause of rampant corruption and he felt that the moral side of the question was infinitely more important. At a prayer meeting he gave the lead–Government meekly followed, and practically all the controls disappeared overnight.

Gandhiji is dead. He secured us our freedom and we had hoped that he would be spared to us for a long time to help us to consolidate that freedom. But the dastardly deed of a maniac has robbed us of his devoted services. But let us not forget that behind this act there is an ideology and an organised movement. And it rests with us to decide whether that ideology is to prevail in our country, and that movement is to succeed.

We were peculiarly privileged in having a man, like Gandhiji living in our country and working for us. After his death let not history pass the verdict on us that we were not worthy of him. It is not enough to call meetings, pass resolutions, and pay homage to him. We must carry on the work which he left unfinished. And that is the work of building up a strong powerful secular state. Let us drive this demon of communalism and sectarianism out of our land. Let us forge a common bond of citizenship between us. Let us worship God in our own way, but let us bring a common loyalty and a common allegiance to the State. Then only although Gandhiji is dead in the flesh he will always be with us in the spirit and his spirit will guide us, comfort us and bless us.

5

MY WORKING FAITH

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MY WORKING FAITH

No one can go through life without a working faith. It would be like being in a rudderless boat on unchartered seas at the mercy of waves and winds.

Your working faith must be unavoidably related to the temperament with which you are blessed or cursed. You may be sensitive and emotional. You may be realistic and indifferent to other men's opinions. You may be vain and love to bask in flattery and adulation. It is very rarely that your working faith can go counter to what you fundamentally are. In a large majority of cases your character, your make-up, your back-ground will go to build up the tenets of your working faith.

Your working faith is the armour with which you face the universe and your fellow-men. Every one of us is terribly lonely—infinite spaces separate one soul from another. There is no human communion possible which can bridge over this ultimate loneliness. But one can't always reside in the fastness of one's soul. One has to acquire a philosophy which

would regulate one's social contacts and which would determine one's attitude towards the Great Beyond.

There are two ways in which you can approach your fellow-men. Either you believe in the fundamental goodness of man or in his fundamental wickedness. If you believe in the former there is plenty of disillusionment and heart-aches in store for you; if in the latter you may have less pain and sorrow but life loses most of its romance and beauty.

I must confess that I have always had the tendency of idealising the people I have come in contact with. I have attributed to them the finest qualities and noblest motives. I have put them on a high pedestal of probity and honour. And I have gone through life painfully realising how different was the hard stern reality from my rather sentimental and romantic conception of it. On the other hand if you expect nothing from your fellow-men you will receive no shocks. Every time someone does something friendly or unselfish it is an agreeable surprise for you. But disillusioned as I have been I would still justify my faith in my fellow-men. You can't get much out of life unless you expect a great deal. You can't get men to put forth their best unless you expect great things from them.

You remember how Margaret in Foster's "Howard's End" says of her father that he always paid rent to the ideal, to his own faith in human nature and how he said that it was better to be fooled than to be suspicious. Have faith in your fellow-men. Life without such faith is a very empty and tawdry thing.

The only abiding satisfaction that one can get is from one's work. It is in the quality of the work done that a man realizes himself. It is not always that we can all find work which is after our heart. But whether it is a humble task or the achievement of a lofty ambition, it is what you put into the work that matters. Happiness, that elusive thing, only lies in striving with what faculties the Gods have given us in doing the work that the Fates have allotted to us. I often like to read what Haldane says in the last chapter of his great autobiography. This is what he says:

"I have no sense of success on any large scale in things achieved. But I have the sense of having worked and of having found happiness in doing so. Better that than more honours and more wealth and more esteem from man. For the happiness gained has a character in it of which nothing beyond can take the place."

With work must go leisure and a proper use of it. I am no ascetic and I have always

taken a pleasure in the good things of life. But those things cease to be good if taken too often and in large doses. Therefore the cultivation of one's leisure is a fact of supreme importance in one's life. You can judge a man as much by what he does with his leisure as by the kind of work he does. Reading has been my solace and comfort all through life. I have fallen back on it when pleasure has palled, when the whims and moods of friends have wearied me, when the world has seemed cold and indifferent.

I have always passionately believed in my country. Before I took my seat on the Bench I hoped and dreamed and worked for unity between the two great communities that inhabit this great India of ours. I have lived to see a day when they are torn apart by dissensions, suspicions and misunderstandings. But my faith still dwells within me. I still believe that whether in one home land or in different they will work together to make India free.

But freedom has many facets. I shall not be satisfied with political freedom for my country. I attach equal importance to economic freedom. Freedom is meaningless unless it assures to every one at least the bare necessities of life. And nothing oppresses one more in this country than the terrible contrast bet-

ween great wealth on the one hand and crushing poverty and destitution on the other hand. Ours is a land flowing with milk and honey. There is enough for every one to go round. Something might be wrong with our production but infinitely more so with our distribution. I do not believe in political labels or economic "isms" or importing wholesale foreign systems. But when one country has successfully tackled the problems which are very similar to our own, it is worth studying the polity of that country. Russia is an agricultural country; it is a land of many races, cultures and religions, and it has produced a political and economic solidarity which has withstood the most awful ordeal and the most terrible test of War. It is my faith that we might profit by the lesson of Russia, make our country a land of peace and plenty, make every Indian passionately devoted to his motherland and give him a fair and equitable share in the fruit of his labours.

While I recognize the necessity for spreading education to the masses, my faith in the cultural aspect of education remains unshaken. The modern tendency is to emphasise its usefulness as a bread-winning factor and underline its scientific and technical side. But surely education is much more than that. It furni-

shes you with certain standards and certain values with the help of which you can judge all your experiences in life. A truly educated man is of necessity a cultured man. By culture I do not mean merely a thin veneer of sophistication. A cultured mind is a balanced mind. It has toleration for weakness, sympathy for suffering. It hates cruelty, injustice and oppression wherever it is to be found. In the darkest hour it does not swerve from a certain minimum standard of decency and fair-play.

What about my attitude towards the Universe? I profoundly believe in the Biblical saying that man does not live by bread alone. Every man wants to reach out his hands to the stars. No material comfort no worldly success can satisfy that spiritual craving which is in every one of us. And therefore our philosophy must find a place for the spiritual side of our nature. A sound philosophy must find a true harmony between the prose and the poetry which is in each one of us. Conflict in life arises because more often that not our emotional side is starved. However prosaic our existence, we must from time to time go to the mountain tops and commune with the stars.

And finally, I believe that in what I have

made of my own life I have played a very small and insignificant part. Whether you call it the contingent in life or Kismet or Providence or God there is an outside agency which guides and controls the steps of every one. And however much we may flatter ourselves in being rationalists and scientific-minded, to this outside agency we must turn as we pass through the various stages of our existence. Within ourselves there will always be struggle, conflict, the looking before and after, loneliness and utter wearines of the flesh. It is only when we turn to someone outside ourselves — someone who is always prepared to share our burden and lighten our toil that we get a glimpse of peace and contentment. Striving for success does not bring happiness. It may bring wealth, power, popularity. But happiness only comes when you are at peace with yourself and your fellow-men. And that peace you cannot achieve by your own unaided effort. You must be humble in soul and kneel in silent prayer to One who alone can understand your needs, your cravings, your heart-aches, your disappointments and your triumphs.

6

INTERNATIONAL COURT OF JUSTICE

6

INTERNATIONAL COURT OF JUSTICE

THE United Nations Organization was set up in order to give effect to the determination of the nations of the world to save future generations from the scourge of war. But if peace is to be made permanent and lasting some method was to be discovered which would resolve disputes between States. Within a State itself disputes between individuals are decided by Municipal Courts. A Municipal Court has three advantages which under the present circumstances no International Court of Justice can possess. A Municipal Court has a definite, well settled body of law to enforce; its jurisdiction is compulsory and not voluntary; and finally it has the coercive agency of the State to enforce its decrees.

When States or Nations fall out, they resort to arms, and let the god of war settle the issue. But this procedure is so ghastly, so expensive in terms of blood, tears and sweat, and experiments have been tried from time to time of devising a more rational and peaceful method. In mediaeval times the Papacy

sometimes acted as the arbitrator. But the modern conception of an International Court started with the Hague Conferences of 1899 and 1907 which set up the Permanent Court of Arbitration. After the first world war the Permanent Court of International Justice was established according to the covenant of The League of Nations. And although the International Court of Justice set up by the Charter of the United Nations is an independent tribunal, in substance, in its jurisdiction, powers and authority it is the Permanent Court of the League of Nations itself in a different shape and form.

It consists of 15 Judges representing different Nations. The method of electing these Judges is cumbrous and complicated. But in effect a Judge can only be elected if he secures the majority of votes of both the Assembly and of the Security Council. The term of office is nine years with the right of being re-elected. In order to avoid all Judges going out of office at the same time, it is provided that five Judges should go out of office after three years and five more after six years. The annual salary of a Judge is 21,000 Dollars.

The nations at present represented on the Court are El Salvador, Chilly, Brazil, Egypt, France, Mexico, U.S.A., China, Norway, Russia,

United Kingdom, Canada, Belgium, Poland, and Yugoslavia. Article 9 of the Statute of the Court of International Justice lays down a counsel of perfection as to how the electors should cast their votes. Not only should the voters bear in mind that Judges possess the necessary qualifications, but they must also bear in mind that in the Court as a whole the representation of the main forms of civilization and of the principle legal systems of the world are assured. The cynic would doubt whether, with India unrepresented, the electors had this Article in front of them, when they cast their votes. How perfect the world would be if votes were always given on merits!

The President of the Court is Dr. Guerrero, representing El Salvador, a South American State. I had the honour of meeting him when I was at the U.N.O. last year. As a matter of fact he came to make a statement before me on the privileges and immunities of the Judges of the Court, when I was the Chairman of a sub-committee of the Legal Committee which was dealing with this question. I have rarely come across a man of greater charm and culture, and of wider learning. Indeed the International Court is fortunate in having as its president so talented a person as Dr. Guerrero.

The first difficulty in the way of the Inter-

national Court is that there is no well defined body of International Law which it can enforce. At the last session of the U.N.O. where I was present, a committee has been appointed to codify International Law. India is one of the members. This is a big stride forward, because a knowledge of what International Law is is the first step towards its enforcement.

The trial at Nuremberg has also succeeded in laying down certain guiding principles of International Law.

Till there is general agreement among the Nations as to what is International Law, the Court has to apply some law. And the Statute does provide what that law should be. That law comprises in the first instance of international conventions which establish rules which are expressly recognized by the contesting States. Secondly, international custom as evidence of a general practice accepted as law. Thirdly, the general principles of law recognized by civilized nations. Fourthly, judicial decisions and the writings of publicists. And finally, if parties agree, the Court may decide according to justice and equity. It is clear that in the evolution of International Law the Court itself must play an important part. By its decisions it can mould and shape and even create International Law.

The other factor which militates against the Court becoming really powerful is its jurisdiction. Essentially it is voluntary. The Court has jurisdiction only when two disputing States refer a case to it. But there is an optional clause under which a State may declare that it accepts as compulsory the jurisdiction of the Court, in relation to any other State accepting a similar obligation. Then as between these two States the Court has jurisdiction to determine various questions relating, among others, to interpretation of treaties and International Law. There was a similar clause in the Statutes of the old Permanent Court; and 49 States had accepted the compulsory jurisdiction of the Court. But most of these acceptances were with reservations. All these acceptances are now deemed to be acceptances for the purpose of the present Court.

One other function of the Court is to give advisory opinions at the instance of the General Assembly or the Security Council and also of the other organs of the United Nations duly authorised. Although there is no sanction behind these opinions, they should be of considerable importance for guiding the United Nations themselves, and also for creating

public opinion in favour of or against any particular State.

My listeners will remember how Field Marshal Smuts tried to persuade the General Assembly to refer the question of the Indians in South Africa to the International Court for an advisory opinion. Of course, his object was to put off the evil day when the General Assembly should give its verdict on his scandalous treatment of his Indian nationals. Now it is only on legal questions that the advisory opinion of the Court can be sought. The violation by South Africa of the provisions of the Charter and of her International commitments was so clear and so flagrant that the issue raised before the Assembly was more a political than a legal one. If Smuts had succeeded in his move he would have dragged the Court into a political controversy which would have done it irreparable harm. Judicial tribunals, if they want their decisions to be respected, should scrupulously keep away from politics. And let it be said to the everlasting credit of the Assembly that it vindicated its own good sense and the fair name of the International Court by rejecting Field Marshal's plea.

With regard to the enforcement of the decisions of the Court in cases properly submitted before it, each member State of the

United Nations has given an undertaking to comply with the decisions of the Court in any case to which it is a party. And if it fails to do so, the other party can resort to the Security Council for assistance. This is an important advance upon the procedure of the Permanent Court, because for the first time the concept of the enforcement of the decision of an international tribunal has entered the field of international law.

Thus it will be seen that the International Court of Justice is a very important organ of the United Nations. It is by no means perfect, nor has it the authority of the power which one would like to see it possess. But it embodies a very great idea—the only idea which will ultimately lead to peace and goodwill among nations—namely that just as individuals do not rush at each other's throat when they have a dispute between them, so also nations should not resort to arms when there are differences between them, but should abide by the decision of an independent and impartial judicial tribunal.

Independence and impartiality the tribunal certainly has. But it still lacks, as I have pointed out, the requisite authority and power. Nations, unaccustomed in the course of their dark and sanguinary history to the ways of

reason and law, are making their first essay in submitting their disputes to the determination of a judicial tribunal. If this tribunal is to take the place of clash of arms, much still remains to be done. International law must be put on a firm and sound footing. The jurisdiction of the Court, instead of being mainly voluntary, must become in all cases compulsory. And finally there must be a proper sanction behind every decision of the Court—its decisions must be enforced, if necessary, by the coercive machinery of the United Nations.

7

INDIA AND UNITED NATIONS

7

INDIA AND UNITED NATIONS

A FREE and independent India must play her full and proper role in international affairs. Her foreign policy must be laid down in India and given effect to through her ambassadors and diplomatic representatives all the world over. But she must also play her part in the comity of Nations. And that she can do by being a member of the United Nations, accepting in full her obligations, conscious also of her rights and privileges.

The United Nations Organisation was established on the basic assumption that the world is one and indivisible. The only way to avoid war was not to divide the world in blocs and groups but to tackle all problems as affecting the whole world. The economic malaise from which the world was suffering was due to faulty production and distribution. And the remedy lay in the whole world being called upon to produce more and distribute more equitably. A sense of security was essential if nations were to cease to arm themselves and prepare for another war. For that purpose it

was intended that an international police force should be provided. The international Court of Justice gave effect to the idea that differences between nations should be resolved not by the arbitrament of war but by peaceful and judicial arbitration.

Two diametrically opposed ideas had to be reconciled in the Charter of the United Nations: the sovereignty of each nation and the overriding authority of the United Nations Organisation. While it was provided that the Organisation would not interfere with the domestic affairs of the Nations, the latter in their turn also agreed to surrender part of their sovereignty by subscribing to the principles and purposes of the Charter, and agreeing to be loyal to them.

The right of the veto given to each of the Big Powers was a realistic corrective to the idealism underlying the setting up of the Organisation. It was realised that war could not be avoided unless all the Big Powers agreed on major issues. If one held out it was sufficiently strong to thwart and defy the organisation.

India was one of the original signatories of the Charter and has always been a loyal and enthusiastic member of the organisation. She wants peace more than any other country

and the principles of the Charter have been a living faith with her long before they were transcribed in their present form. But till 1946 she could not play an independent role. She was tied to the apron strings of Great Britain and her foreign policy was settled and dictated by her foreign rulers. In 1946 the Congress had accepted office in The Central Government and our present Prime Minister selected an independent delegation to represent our Country. For the first time the real voice of India was heard in the Councils of the world. I remember the leader of the Czecho-Slovakian delegation telling me that so far if he wanted to know what the Indian Delegation thought on a particular subject all that he had to do was to ask his British colleagues, and he knew that India would toe the line chalked out by England. But this time, he said he knew that India had a policy and ideas of her own.

The one question on the agenda of the Organisation in 1946 which was of deep and vital interest to India was the treatment of her nationals in South Africa. It raised a very big question, far transcending its local and parochial interest. It raised the thorny question of the colour bar. It raised the question whether consistently with the Charter

civic rights could be denied to a section of the subjects of a country on the ground of race, colour or community.

India, in advocating her cause found herself confronted with difficulties which seem to be almost insuperable. The United States had her own colour problem and she looked upon us as stirring up the hornet's nest. Her opposition was a foregone fact. She dominated the Organisation and with her she was bound to carry several Nations, especially the South American States which were within her political orbit. Then there were the Colonial Powers like England, France and Holland. They had their own skeletons in the cupboard. And finally General Smuts with that astuteness for which he is noted proclaimed himself to be the protagonist of the sacred right of domestic and internal sovereignty of the Nations.

Notwithstanding all this India won. And in winning she did not merely establish the righteousness of her own cause, but also got the Organisation to subscribe to principles which were of universal application. Racial discrimination was condemned as being contrary to the Charter. It was clearly laid down that the sovereignty of the Nations was circumscribed by the principles of the Charter, and the Nations were no longer free to legislate

even with regard to their domestic affairs in any manner inconsistent with the principles of the Charter.

How and why did India succeed? Largely due to the strength of her cause, it is undoubtedly true. But India also had the sympathy of a large number of Member States. They realised that she was speaking the language of the Charter and appealing to principles which they themselves had subscribed to. As far as freedom went she was a young nation and her gallant fight excited the admiration of older nations whose histories also contained pages recounting sufferings and struggles in the cause of freedom. They also admired her for the independent line she took on all questions that came before the Organisation, because it would be a mistake to think that India only concerned herself with her own problems and ignored the other important matters of general world concern which came before the organisation. India played her full part in all discussions and debates and was always listened to with respect.

Latterly India has realised that all is perhaps not well with the Organisation. The Veto has become a dead hand which stultifies all its activities. More and more it becomes apparent that problems are not being dis-

cussed on their merits but power politics plays a big part in their determination. The aftermath of the South African question, the way the Kashmir situation was handled in the Security Council are all pointers in that direction.

But India cannot afford to lose her faith in the United Nations. The alternative is that she must become a pawn in the game of the Great Powers, ally herself with one group or other and lose her independence in the domain of foreign politics. United Nations still remain the only answer to war and aggression. Everything that strengthens that organisation works for peace and concord among nations. Everything that weakens it brings the day of the horrible clash of arms nearer.

8

WHY INDIANS HAVE TO FIGHT THE AFRICAN GOVERNMENT

8

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The following is the full text of the speech delivered by Justice M. C. Chagla (India Delegation) at the joint committee of the First and Sixth Committees of the United Nations on the treatment of Indians settled in the territory of the Union of South Africa, on Monday, November 25th, 1946.

I must congratulate Field Marshal Smuts on the very clever and ingenious speech which he delivered on Thursday. I am sorry I cannot compliment him on having struck a note which was worthy of his reputation as an elder statesman and of the fact that he is one of the main architects of our Charter.

In order to understand and appreciate the legal and technical point which he has raised it is necessary to view it in its proper setting. The problem in South Africa has a definite historical background and without a proper appreciation of that background it will be impossible for the members to assess the true value of the point urged by Field Marshal Smuts.

A few salient points stand out from the welter and mass of documents, facts and figures with which the members have been acquainted through the Secretariat of our Delegation and the Delegation of South Africa. The first important fact which has to be constantly borne in mind is that Indians went to South Africa at the urgent, pressing and importunate request of the South African Government. They did not go as homeless immigrants looking for shelter and refuge. The existence of the Indian community in South Africa is due to a mutual agreement arrived at between the Government of South Africa and the Government of India. Indians went there as a result of solemn assurances and undertakings given by the South African Government. They were to be treated on equal terms with the white settlers in that country and to enjoy the same rights of citizenship as they enjoyed.

Lord Salisbury, Secretary of State for India in 1875 made a solemn declaration that Indian settlers will be "free men in all respects with privileges no whit inferior to any other class of His Majesty's subjects resident in the colonies". My friend Sir Hartley Shawcross, who now represents His Majesty's Government will, I hope, if he intervenes in this debate, bear in mind this assurance solemnly given

by his then Government. As recently as the 28th of March, 1946, Mr. Hofmeyer, Deputy Prime Minister of the Union said "quite clearly from the very outset in those days (referring to the days of the introduction of Indians into South Africa in 1860) the Indian was welcomed as a permanent settler in the colony of Natal and as a contributor to the prosperity of that colony. I say again that that arrangement was come to between Governments It was the South African Government that pressed it on the Indian Government." It will be noted from what Mr. Hofmeyer said that the Indians contributed considerably to the prosperity of Natal. By their hard work and industry they converted a barren land into one flowing with milk and honey. But an ungrateful Government forgot the services rendered by the Indians and ever since 1860 when the Indians first went to South Africa we witness a painful history of broken promises and pledges which have not been fulfilled. I shall not enumerate all the promises given but may I draw the attention of this Committee to two or three of the most important in the history of the relations of the South African Government with Indians. You have been told in very moving terms by my Leader, Mrs. Pandit, of the gallant and spirited fight waged by Mahatma Gandhi against a

powerful and aggressive Government. At the end of that fight, Field Marshal Smuts passed an Indian Relief Act and assured Mahatma Gandhi that that would constitute a complete and official settlement of the controversy which had existed for so long, and further, that the existing laws would be administered in a just manner and with due regard for vested interests.

The Capetown Agreement of 1927 solemnly recorded that the Union Government firmly believed in and adhered to the principle that it was the duty of every civilized Government to devise ways and means to take all possible steps for the uplifting of every section of the permanent population to the full extent of their capacities and opportunities and accepted the view that in the provision of education and other facilities, the considerable number of Indians who remained a part of the population should not be allowed to lag behind other sections of the people. What steps the Union Government took to redeem that pledge for uplifting the Indian community I shall refer to later. In 1944, the Pretoria Agreement was arrived at between the South African Government and the Natal Indian Congress. Although the representatives of the Indian Congress reluctantly agreed to certain restrictions in respect of

residential occupation, it was clearly understood that there was to be no restriction of Indians acquiring properties of any kind in the Province. In breach of this agreement, the Union Government put on the Statute Book the Asiatic Land Tenure and Indian Representation Act, 1946, which was the culmination of a long and continuous process of discriminatory measures against the Indian community. Even so, the Indians in South Africa and the Government of India did not lose their patience. A commission presided over by an eminent South African Judge, strongly recommended that "the only way out of the present impasse lies in the direction of a full and frank exchange of views between the Government of the Union and the Government of India." An arrogant Government refused to pay heed to the suggestion of its own Commission and passed through Parliament, the Act to which I have just referred. It was under these circumstances that the Government of India was compelled to break off diplomatic relations with South Africa, to put an end to all trade between the two countries, and Indians in South Africa were driven into launching another passive resistance struggle which has resulted in hundreds going to prison for the purpose of vindicating the honour and prestige of the race to which they have always

been proud to belong.

It is true that Indians in South Africa are citizens of the Union. In 1913, the Union Parliament gave them that status. I was wrong in using that expression "status" because when one talks of the status of a citizen, one thinks of civic rights: the right of franchise, the right of a share in the Government of one's country, the right of holding offices in the Government. But Indians are citizens of South Africa only to bear the burdens and obligations of citizenship. They have no rights. They have no franchise, municipal or parliamentary, although they pay their taxes—it is a gross example of taxation without representation. They have no right to ventilate their grievances in the Legislature because they have no representation. Under the circumstances, the Government of India have at all times considered it their solemn duty to look after the interests of Indians who went to South Africa at the invitation of the South African Government and on condition that the assurances given by the British Government in respect of their rights would be carried out. Even the South African Government has, all along, accepted this position. It has negotiated with the Indian Government from time to time, it has invited representatives of the Government

of India to be present at Conferences held in South Africa on the Indian question, it has entered into an Agreement with the Indian Government and has accepted the position that the Government of India has a right to protect the interests of the Indians in South Africa. In short, the Union Government has never, till Field Marshal Smuts raised this point before you, treated the Indian problem in South Africa as a domestic problem. It has always treated it as a problem in which two Governments were interested—the South African Union Government itself and the Government of India. Let us again turn to Mr. Hofmeyer, Deputy Prime Minister of the Union, to see whether he bears out what I have just been saying. This is again in his speech of the 28th. March, 1946: "that being so I do not see how we can blame the Government of India for seeking to discharge that responsibility as long as we withhold from our local Indians the opportunity of stating their own case here in Parliament. We cannot blame the local Indians, as we put it for 'running to mother India' unless we recognize them as South African citizens with rights of citizenship."

Let us for a moment consider why we object to the Asiatic Land Tenure and Indian Representation Act of 1946. Its main provisions deal

with the occupation and purchase of land by Indians and with the representation of Indians in the Union legislature. In regard to the first, for the first time in the history of South Africa, the principle of segregation has been applied to Indians in Natal and severe restrictions have been placed upon them in respect of the occupation and purchase of property. In regard to the second, it is true that representation has been given to Indians, both in the Union Legislature and in the Provincial Council of Natal. But Indians are not placed on the common roll of electors. They have a separate communal electorate and as far as the Union Legislature is concerned no Indian can be elected to it — Indians must agree to be represented by Europeans. It will be seen that the principle underlying both these provisions is racial arrogance and the conception of racial superiority. The object is to insult and humiliate Indians who are fellow citizens of the Europeans and brand them as an inferior race.

Field Marshal Smuts in his speech proudly asserts that his Government has not infringed the right of Indians to exist and has not denied them the means of sustenance. On behalf of my countrymen I express my deep gratitude to the Field Marshal for not, to use an expression which has rather painful connotations, liquida-

ting my community in his country. He says that Indians have not been persecuted in South Africa. I agree; but there are worse things than injuring the body or taking the life of an individual. You can maim the soul; you can break the spirit; you can make him lose that human dignity which alone makes life worth-while.

It has been urged by the South African Delegation that segregation is good for the Indians and that they do not really know what is good for them. Of course we are prejudiced and biased. We are, according to Field Marshal Smuts, just making political capital out of something which South Africa has done in the best interests of Indians. But let eminent South Africans themselves speak and tell you what they think of segregation. This is what the report of the Commission, presided over by Justice Lange, said in 1920: "There should be no compulsory segregation of Indians....indiscriminate segregation of Asiatics in locations and similar restrictive measures would result in eventually reducing them to helotry. Such measures, apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European." Let us again turn to our friend Mr. Hofmeyer: "The plain truth, whether we like it or not, is that the dominant

mentality is a Herrenvolk mentality. The essential view of our problems is to be found in that fact. The true solution of those problems must be sought in the changing of that mentality. We cannot hide our prejudices in a cupboard from inspection by others. Our chief loss is a moral loss as long as we continue to apply a dual standard in South Africa to determine our attitude towards, and our relationship with, Europeans and non-Europeans on different ethical bases, to assign to Christian Doctrine the significance which varies with the colour of men's skins. We suffer as a nation from what Plato would have called "the lie in the soul" and the curse of Iscariot may yet be our fate for the betrayal of the Christian Doctrine which we profess."

With this background present before us let us now turn to the issue of domestic jurisdiction. The Indian case is that the South African Government, by its general policy and by the enactment of the Asiatic Land Tenure and Indian Representation Act of 1946, has (a) committed a breach of the Cape Town Agreement of 1927 and (b) violated the fundamental principles and purposes of the Charter. Field Marshal Smuts, if I understood him right, concedes that if there was a treaty between the Government of India and the South African

Government, regulating the rights of Indians in South Africa, the question which you have to consider would cease to be a domestic question. But he violently disputes the fact that there was any agreement between the South African Government and the Government of India. I shall quote his own words "the so called agreement was an honourable and amicable understanding rather than a binding treaty". I do not know whether Field Marshal Smuts wishes to imply that an honourable and amicable understanding is less binding on the conscience of a nation than a formal treaty. Now there is no magic about the word treaty. Any solemn agreement arrived at between two states or two Governments, would constitute an *inter-national* pact, agreement or treaty. All that we have got to find is whether all the ingredients which law, or international law, requires for the purpose of a binding pact were present in the case of the Cape Town Agreement. I always like South African statesmen and responsible officials to speak in my cause because they do it ever so much better than I could ever do. I shall now proceed to quote a telegram sent by the Governor-General of South Africa from Cape Town to the Governor-General of India, dated 16th February, 1927. "My Ministers desire me to inform Your Ex-

cellency that they have formally approved of an agreement which has been reached between our representatives and representatives of the Government of India at conference which was recently held in Cape Town. They feel assured that Agreement, should it also be ratified by your Government will be the means of establishing friendly co-operation and lasting goodwill between South Africa and India."

This Agreement was solemnly ratified by the legislatures of both countries, and this is the Agreement which Field Marshal Smuts has chosen to characterize as a 'so-called Agreement'. To what extent the South African Government worked for establishing friendly co-operation and lasting good will between South Africa and India after this Agreement was ratified is by now well known to you. It is also well known to you how the South African Government carried out one of the most important provisions of the Agreement, namely to devise ways and means and to take all possible steps for the uplift of every section of the Indian population by conferring upon the Indian community the great boon of racial segregation! Therefore, the South African Government stands condemned for having violated a solemn agreement arrived at between the Governments of the two countries and which has never been

put to an end and on the contrary was reaffirmed in 1932.

The other point raised by Field Marshal Smuts is, to my mind, of paramount importance to the United Nations. If I may summarize Field Marshal Smuts' arguments they come to this. In my own country I can do what I like. I can treat a racial minority as the Germans treated the Jews. I can shut them up in Ghettos. I can violate the principles of the Charter and yet the United Nations cannot call me to order. Now it is quite true that South Africa is a sovereign state and no one questions her sovereignty, but as a sovereign state in signing the Charter she has undertaken certain obligations and those obligations are to conform to the principles and purposes of the Charter. To that extent the result of the signing of the Charter has been the "contraction of the domain of essentially domestic matters". I am using the language of Field Marshal Smuts. Art. II, Sub-Clause 7, has been enacted to emphasize the sovereignty of every state which is a party to the Charter and to preserve, untrammelled, its full and unfettered jurisdiction to act within its domestic sphere. But South Africa, by her own act in signing the Charter, has chosen to restrict and contract her domestic sphere. What Art. II, Sub-clause

7 safeguards is that domestic jurisdiction which subsists after it has been contracted by the undertaking of international obligations.

All the United Nations have joined this organization on the basis of the Charter. Its provisions bind everybody. Is it suggested that any of the signatories can, with impunity, violate one of the binding terms of the Charter and the U. N. organization has no right to take any action against the offending members? If that be the true interpretation of Article II, Sub-clause 7, I do, gentlemen, in all seriousness ask you to treat this Charter as a scrap of paper. Tear it up and have done with it. We are sitting here wasting our time.

I entirely agree with Field Marshal Smuts when he said "the wider aspects of the case of the Government of India now pending before you have much larger implications than the present disagreement between the two Governments concerned. They affect the very basis of U.N.O and the foundations upon which our hopes of peace are built". Your decision, gentlemen, will either inspire the people of the world with the hope that there is going to be peace and security, or will make them feel that this organization is merely a facade behind which all the old passions and racial arrogance still sway the minds of governments notwith-

standing the Charter.

I am obliged to Field Marshal Smuts for practically accepting the arguments I have just advanced. This is what he says in his speech: "Although every effective international recognition of fundamental human rights will, of necessity, involve a corresponding contraction of the domain of essentially domestic matters and narrow down the field within which states are at liberty to frame their inter-national policies as they may deem expedient, it may be anticipated that these elementary rights will, in due course, receive the sanction of the community of nations." But he makes a strange point and says that, inasmuch as fundamental rights have not been internationally formulated, therefore, there is no obligation upon the government to observe any fundamental rights. I am frankly amazed at this argument. Do the members present here have any doubt as to what human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion mean? Have they any doubt as to what dignity and worth of the human person means? Have they any doubt as to what equal rights of men and women and of nations, large and small, mean? And have they any doubt that discrimination between race and race, segregation of one race as an inferior

race, violate the principles of the Charter?

It is also important to note that in Art. II, Sub-clause 7, the language used is not "matters which are within the domestic jurisdiction of any state", but "matters which are essentially within the domestic jurisdiction of any state". Therefore, although a matter may be within the domestic jurisdiction, still it may not be essentially within the domestic jurisdiction. The draftsmen have advisedly used the word "essentially" and a proper meaning must be given to that expression. Therefore, it is really a question of degree whether in a particular matter the United Nations would intervene or not. It would be for this organization to decide whether the matter complained of is so domestic in its nature that the organization would refrain from interfering with the discretion of a sovereign state. I shall give an extreme illustration. Could it be suggested that if South Africa were, tomorrow, to introduce slavery into its domain this organization would not interfere? It is for this reason that our delegation has been emphasizing the fact that the question you have got to consider is pre-eminently a political question, rather than a legal question.

Whether a matter is essentially domestic or not must also depend on the development of

inter-national relations. An advisory opinion on this point was given by the Permanent Court of International Justice on the 7th of February, 1923 in the Tunisian case, where there was a dispute between England and France. The language the Court was considering was the expression "solely a matter of domestic jurisdiction" and the French text "exclusivement d'ordre interieur" in Article 15 paragraph 8 of the covenant and the court decided that the question whether a certain matter is or is not solely within the jurisdiction of the state is an essentially relative question—it depends upon the development of international relations; and took the view that the right of a state to use its discretion is restricted by obligations which it may have undertaken towards other states. I have already pointed out what the inter-national relations that have developed between the South African Government and the Government of India are and also what obligation South Africa has undertaken towards the Government of India. Further it is rather late in the day for South Africa to urge that this is a domestic matter. Only the other day in the Plenary Session of the United Nations we carried by acclamation a resolution moved by Egypt protesting against racial persecution and discrimination wherever it might be taking place.

"meeting" in Art. 11 and 12 of the statutes of the International Court of Justice. It is a question of interpreting the Charter and every minute some Committee or sub-committee or the Plenary Session of the Assembly is interpreting what the Charter means and I cannot conceive of a more appropriate case than this one where this committee and ultimately the Assembly itself should construe what the Charter means.

In conclusion, gentlemen, when you come to vote upon the resolution which we have moved I do beg of you to consider the grave implications of the vote that every one of you registers. It would be a great mistake to look upon this question as a conflict between Asiatic states and non-Asiatic states. Something much more vital than that is at stake. What is at stake is the very existence of this organization. If this resolution is defeated it would mean that this organization does not exist in order to protect human rights and fundamental freedoms and is prepared to connive at the wicked and vicious doctrine of a master race which so many nations victoriously fought in the last war at a tremendous cost of blood, tears and sweat.

9

UNIQUENESS OF INDIAN CIVILIZATION

9

UNIQUENESS OF INDIAN CIVILIZATION

I DEEM it a matter of great pride and privilege to have been asked to inaugurate this All India Cultural Conference. I congratulate the Indian Cultural League which has taken the initiative in convening this Conference and also the All India Association of Fine Arts, the Historical Society of Bombay, the Philosophical Society of Bombay, and the Indian National Theatre which have co-operated in making it possible for the Conference to meet here.

Since India became free and independent we have been emphasizing the political, constitutional, economic and industrial aspect of things. Politically our hands have been full with a thousand problems that face a new State. After long and careful deliberations we have just put the seal on the constitution which will govern our country when it becomes a fullfledged republic on the 26th January. We have been realising that political democracy without at the same time the democratic spirit pervading the economy of our country and cordial relations being maintained between capital and

labour in the industrial field would be merely a veneer which would crack with the passage of time. Therefore it is but right that our statesmen and our distinguished sons and daughters should labour incessantly to strengthen the foundation on which the new republic will rest. But you must not overlook the things of the spirit which are no less important for a nation than the external equipment which gives the nation strength, vigour and power. A nation must have a body, it must have intellect and organizing capacity; but it must also have a soul, and culture emphasizes the soul of the nation. There is no more perplexing question to answer than what is culture. Like many other elementary and fundamental qualities it is easier to recognize when one sees it than to give a precise definition. To my mind the culture of a nation is the moral and spiritual standards which it sets up before it. It is its outlook on life. It is the philosophy of living in which it believes. There is a sharp distinction between religion and culture and the two concepts must not be confused. Religion deals with the relations of man with his Creator. Culture deals with the relations of man with his neighbours and his environments. While religion teaches how one should live in order that one should be in tune with the Infinite, culture

emphasizes the worthwhileness of life and takes a man out of his sordid and unhappy surroundings and teaches him to distinguish between true and false values, understand and appreciate beauty, and to accept life with dignity if not joy. The culture of a nation is enshrined in literature, art, music and theatre. One hears in them the pulse of the nation. One is made conscious of the joys and sorrows, the glory and the frustration through which the nation has passed and the faith and beliefs and traditions in which the nation has been brought up. In the case of an individual his eyes are the windows of the soul. In the case of the nation its eyes are literature, art, music and theatre. It is through these eyes that it looks out upon the world and the world looking into these eyes can judge what the soul of the nation is.

In the history of many countries political freedom has been usually accompanied by renaissance of the spirit. The forces which were pent up or which were confined in a narrow space and were concentrated only upon the problem of emancipation are released. There is an end of frustration. Young men and women feel that they have a free country to work for and to build up a state after their own hearts' desire. It is the dawn and artists all over the country should hail the dawn as heralding a brilliant

day. I therefore look forward to a great revival of art and literature in this country. In this revivalism we have to avoid two serious pitfalls. We should give up copying the West and turning out cheap immitations of Western masters. We should equally avoid merely harking back to the past and trying to shine in the reflected glory of our ancestors. The India of today must produce an art of its own, full of vitality, full of the revolutionary zeal with which the people are animated, an art which will tell the world that India is not only a political entity but has a definite contribution to make to the vast cultural heritage of the world which is the only gleam of light in an otherwise dark and forbidding atmosphere.

I am very glad that this Conference is called All India Cultural Conference. It has always been a fundamental faith with me that within the geographical boundaries of India there is a common culture, a culture which has grown out of our common association down the centuries, a culture which is the result of problems faced together and of joys and sorrows shared, a culture which we have inherited as a legacy from our forefathers. This culture has nothing to do with community or religion or territory. There may be diversities due to these factors, but in this diversity a synthesis is

apparent which synthesis has on it the unmistakable and authentic Indian stamp.

I should like to say a word about the controversial question of language. Language is the vehicle of the thoughts and aspirations of a nation. History, philosophy, literature can only be given expression through the medium of language. The legend and songs of the people take a permanent shape through its language. Therefore from a cultural point of view the development of language is of the greatest importance. We have just decided on our national language which we have called Hindi. It should be our duty to see that this language is not only a means of communication between the different castes and creeds that reside in this country, but it also becomes a perfect literary and artistic instrument so that the artists of today and tomorrow can express themselves fully through its medium. We must not treat our national language as a mere workaday necessity, but rather as a symbol and insignia of our culture. In the development of this language we should neither be provincial nor communal. We should not exclude words merely because they are derived from one or other classical language. Words which have become current and which are accepted by the people of the land should conti-

nue to form part of the language. If we wish Hindi to be the language of the people then it must be a language which the common man understands and appreciates. Pandits should not bring a fanatical outlook to bear upon the question so that the language which has grown from the soil should become an artificial pedantic thing rather than a repository of the thoughts and ideals of the people. The more varied the vocabulary of the language the richer it is and I cannot understand why some people fight shy of making Hindi a truly national language which would contain words and expressions used by people in different parts of the country.

I should like to refer to an important aspect of culture which emphasises the joy of living. It cannot be disputed that on the whole there is a marked morbidity in the Indian character. By temperament we are too other worldly. We have been brought up to look upon this world as *maya* and its pleasures as a snare for the wise to avoid. For a great nation that we wish to be this is rather a dwarfed and twisted philosophy. The Philosophy of non-attachment that the Bhagwat Gita preached was not a philosophy of asceticism but a philosophy of enjoyment of life without making the soul a prisoner in the meshes of worldly

attractions.

There is a marked tendency today to teach us to be drab and dreary and go about our business with a long face. I would appeal to the artists and men of letters to set their face against these teachings. I want our nation to work hard, very hard, at the same time to know how to enjoy itself. Puritanism in any form or shape is like a cold blast before which culture must bend and cease to flourish. Free vice has a greater chance of salvation than cloistered virtue because the former may see the error of its ways but the latter must perish in its own sense of righteousness.

The free spirit of man hates the strait jacket and no artist can thrive in a State which seeks to control morals and which denies to the individual the right to decide how he shall find his own way to happiness. It is a grievous error to try and bring up a nation on negations and inhibitions. The men of culture gathered here should be crusaders who should preach to the country a positive philosophy, a philosophy worthy of our Aryan ancestors who were virile full blooded men, who did not live an anæmic life. As the Prime Minister of India has so often repeated, life should be an adventure, a gay adventure, full of surprises, of glimpses of beauty, of tears and laughter, and even of occasional

happiness. It is upon such an adventure that we want the culture of our country to embark and it is for those who are gathered here today to safeguard and enrich the great heritage of art and literature that we have inherited from the past. Anything which is static must droop and die and culture is no exception. In inaugurating this Conference I have every hope that you will help to make our culture dynamic, a living force which will reflect the India of today.

10

ON SOME PROBLEMS CONNECTED WITH THE WRITING OF INDIAN HISTORY

10

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It is a very great honour as Chairman of the Reception Committee of the Indian History Congress to welcome the distinguished delegates who have foregathered here. I see before me noted academicians, scholars and men of letters. When I was invited to be the Chairman, I happened to be the Vice-Chancellor of our University and holding that high office, I perhaps had some right to occupy the position that I am occupying. When I ceased to be the Vice-Chancellor, I felt considerable qualms of conscience as to whether I was qualified to offer you welcome on behalf of the Reception Committee. But I sincerely hope in passing a severe historical judgment on me, you will remember that I was a student of history at Oxford in no less a company than that of the President of the Congress, Mr. Habib, whom I am very happy indeed to meet after a long interval of time and to welcome to our city.

The object and purpose of this Congress is not merely to read learned papers on various

historical subjects. It has a much more imposing and worth while task before it and that is to prepare a standard history of India.

The first problem for a historian is to decide whether history has "a plot, a rhythm, a predetermined pattern". Fisher in his History of Europe sadly confesses that the intellectual excitement of discerning those harmonies in history were denied to him. He points out that the only safe rule for the historian was that he should recognise in the development of human destinies the play of the contingent and *the unforeseen. One is reminded of Hardy's* lines in the Dynasts:

> "..... ..Life a knitter drowsed,
> Whose fingers play in skilled unmindfulness,
> The Will has woven with an absent heed
> Since life first was; and ever will so weave."

But it is impossible to assert that history does not record any progress. The progress may not be continuous. There may be ups and downs. There may be times when mankind has lapsed into barbarism and has shown a capacity for brutality and cruelty which makes one despair of the future of the world. But with all that, slowly and imperceptibly men and ideas have advanced. On the whole there is more liberty, more tolerance, a greater sense of social justice to-day than there was in the

ages past.

But what is the pattern that the historian must try and discover in the history of India? Should the history of India be a history of liberty, a history depicting how men fought against power and tyranny, against invasions and against the might of strong European nations so that men should live in a free society? I am afraid our history will not lend itself to that treatment. Liberty is a rare exotic plant which has been recently nurtured in our Indian soil. It is just shooting up and we are watching its growth and development with anxious care and unfaltering vigilance.

Indian history has often been depicted as a history of action, rise and fall of dynasties, the clash of arms, invasions through the passes of the north-west. This is what the historians have thought has been the sum and substance of Indian history. But the people of the country carried on with their tasks, thought their own thoughts and dreamt their own dreams untouched and unaffected by royal splendour or the panoply of power.

The true history is really a history of ideas which have influenced not only the people of the country but whose influence has spread far beyond the frontiers of India. But on the whole these ideas have not been political in

character. They have not been concerned with this world or the affairs of this world. Our seers and our philosophers have been more concerned with the other world. Being absorbed in the question of the salvation of the soul, they refused mere mundane considerations to weigh with them and took no part in the so-called history that was being enacted round them. Therefore, down the ages we have built up a great spiritual legacy. No historian can afford to ignore it. It has to be appreciated and fitted in into the texture of history which records the march of events and the political transformations of the country. It is often apt to be forgotten that thoughts and ideas have played a much bigger part in the shaping of a country's destinies than wars and invasions.

The idea of nationality has considerably influenced modern Indian history. It is a modern concept even in the evolution of European thought and on the whole its effect has been far from happy or fortunate. The idea of nationality has led to nationalism and it has produced exclusiveness and an aggressive outlook. Nationalism can be territorial, giving rise to patriotism which idealizes the country irrespective of the divisions and differences between the people who reside in it. American nationalism for instance is the most outstanding

instance of territorial nationalism. Men of different European nations and even some of non-European nations enter America. They pass as it were through a crucible and they emerge as American citizens. They may speak their own language, they may have their own customs, they may follow different religions, but they glory in the achievements of God's own country. Nationalism may be racial and may pierce the boundaries of the state. The last war gave us the instance of German nationalism which was not confined to Germany but became racial in its character seeking to engulf Germans residing outside the state. It may be ideological as is now being demonstrated by Russia which proudly proclaims that the ideas for which she stands know no national frontiers, and finally we have the brand of nationalism which is purely religious and communal in its character. The best or the worst example — and that depends upon how you look upon it — is what we have been witnessing in India in recent times.

Originally nationalism in India was territorial. It was intended to be a spurt to freedom and it was a weapon of offence against the foreigner with a view to attaining political liberty But the foreigner realised the danger and erected barriers against man and man in

this country. The impending transfer of power made people greedy and power-conscious and nationalism took a communal turn. Instead of having political majorities and minorities which would be fluid and change from time to time, we erected permanent majorities and minorities and shut them up in communal watertight compartments. We forgot that democracy could only be based on common citizenship and instead of emphasizing our oneness we began to exaggerate our divisions and differences. This fantastic and unreal nationalism reached its culminating point in the two-nation theory with all the terrible and bloody consequences which we have been witnessing. When the transfer of power did come, the heir to British rule was not a united India but a divided and truncated country. I venture to say that all that has been happening in the recent past is a foreign trend which does not fit in with the pattern of our history.

That brings me to what I think is the true pattern of our history. Our history, truly visualized, has been a history of unity. Nowhere else in the world has there been such a synthesis of different religions, cultures and ideas as in this country of ours. In varied and manifold diversity there has run like a golden thread the oneness of India. Invaders have

come and India has absorbed them. New civilizations have come triumphant and after the passage of time they have taken on an Indian pattern. Our greatest thinkers and our greatest statesmen have thought and dreamt about the unity of India and if historians must find a rhythm in our history that is the rhythm to which historical events have marched.

It is difficult to speak to a body of experts as to the method that should be adopted for the writing of the history of India. There is the old question which has to be answered. Is history an art or a science, or is it something of both, and on the answer to these questions would largely depend the solution of the problem. History cannot be a mere recording and narration of facts. It must be an interpretation of the past in order to serve as a guidance for the future. It may be that the research of the past has its own importance and carries its own reward from the scientific point of view. But no historian who is worthy of his high calling can help casting a peep into the future. A historian then to my mind must both look to the past and to the future. The interpretation of the past must not be a biased one. The famous answer given by Ranke to the divine who also had written on the Reformation and congratulated Ranke as a comrade, should

always be remembered. "You are in the first place a Christian. I am in the first place a historian. There is a gulf between us."

I have been re-reading the inaugural address that Lord Acton delivered to the University of Cambridge in 1895 and I have been profoundly impressed by the realization of how true are his judgments on history. There is a great necessity in our country which has recently won her freedom to guard against the corrupting influence of power and there is nothing which can act as a greater or better safeguard than a study of history. Acton quotes the famous sentence of Sir John Seeley: "Politics are vulgar when they are not liberalized by history" and he himself observes, "for the science of politics is the one science that is deposited by the stream of history like grains of gold in the sand of a river; and the knowledge of the past, the record of truths revealed by experience, is eminently practical, as an instrument of action and a power that goes to the making of the future." There are certain values and standards which history has rescued from the limbo of the past. These are everlasting and afford a touchstone by which we can judge men and events. History also is a compilation of the traditions of the past and is a pointer to the heritage which we living in mo-

dern times have inherited. A country without standards and without traditions is like a ship without a rudder sailing in stormy seas. The duty of the historian is to supply the rudder to the statesman so that he should know the direction he is taking, what are the dangers ahead and how far the course he has decided upon is in keeping with the traditions of his country. Every politician and every statesman must always bear in mind that the final tribunal where his actions will be judged is the tribunal of history and I can do no better than to end this short address of mine by repeating this exhortation of Lord Acton to historians "to suffer no man and no cause to escape the undying penalty which history has the power to inflict on wrong".

II

WAR AND CULTURE

II

WAR AND CULTURE

DOES and can culture flourish in War? Is war antagonistic to culture or does the fever of War spend itself out without in any way affecting the main stream of culture? Does War give rise to a special kind of culture due to the unusual outburst of emotion and outlet of nervous energy consequent upon a clash of arms? These are some of the questions that the subject of this paper suggests.

Mighty tomes have been written to elucidate the expression culture and still learned discussions are carried on as to what is and what is not culture. Mathew Arnold calls it the pursuit of perfection and considers the most essential ingredients as sweetness and light. Others have opined that culture is the compendious term for truth, beauty and goodness. We, however, will adopt a more practical and work-a-day definition. The Oxford dictionary defines culture as the intellectual aspect of civilization. Civilization comprises scientific and intellectual progress. The sum total of a country's intellectual progress is the culture

of that country. Intellect is used here in a rather wide and elastic sense. It includes the moral and aesthetic sense.

If culture is the intellectual aspect of civilization—civilization itself is getting away from nature—every conquest registered on nature of science or intellect, every whim of nature, controlled or regularized, every natural instinct in man curbed or idealized is the progress of civilization. Nature is red in tooth and claw and a state of war is going on perpetually everywhere man has not stepped in to raise aloft the standard of civilization. Therefore there can be no affinity between War and Culture—one is the return to the state of nature, the other is the finest fruit of man's progress towards civilization.

But it is suggested that War liberates qualities and emotions which are favourable to culture. Patriotism, self-sacrifice, heroism are all qualities which give an impetus to culture—and there is no doubt that thousands of young men have exhibited these qualities on the field of battle. Modern society also leads to a great deal of frustration. Many a man leads a humdrum existence with his emotions starved and oblivious of the fact that he possesses a soul to be saved or damned. War often puts an end to such frustration. Men

suddenly discover that they have something to live for and a cause worthy of the supreme sacrifice. There is no doubt that War has produced some great poetry, literature and art. But on the whole this peculiar kind of culture is exotic and appeals to emotions which are temporarily stirred. It rarely registers a definite milestone on the onward march of humanity. But in any case War is an expensive method of producing this particular sort of culture. One can be patriotic, self-sacrificing and heroic without necessarily thrusting a bayonet into the inside of an unoffending fellow-man. As Aldous Huxley pointed out ours is the only species in nature which preys upon itself. And the results of War are definitely dysgenic. The young, the brave, the powerful are wiped out and the old and the sick are left in charge of the destinies of Society.

In the old days some of the wars were waged for principles the enunciation and maintenance of which may be considered to be favourable to the spread of culture. Wars of the French Revolution were waged in the name of Liberty, Equality and Fraternity. The Civil War in America was waged by the North for the abolition of slavery. To-day Wars are an expression of naked brute-force. They represent the lust for power and terri-

torial greed. True, in the present War England and France are supposed to be fighting for democracy against Hitlerism. But these very countries turned a blind eye on the expropriation of Austria and Czechoslovakia by Germany. It is only when they felt that their own possessions were in danger, and their own political institutions in jeopardy that the sword was unsheathed. And it must be remembered that the democracy England and France are fighting for is European-democracy. What is sauce for the European goose is certainly not sauce for the Asiatic gander. The War is being waged as much for the maintenance of Free Institutions in England and France as for the perpetuation of Imperialism in India and the French Colonies. And one's mind begins to reel when one watches the spectacle of a Worker's Russia which has always preached to the World its cultural superiority supporting Hitler's Germany and indulging in the same technique of threats and bullying.

In considering the relation of War to culture we must take note of a new phase in the polity of Nations. The Greeks attached supreme importance to the ability and capacity of every Greek to defend his own fatherland. Every man of culture and every philosopher

had to wield the sword in defence of home and hearth. The Greek culture was not averse to that. But the Greeks never glorified War for its own sake. The modern political theory of Fascism and Nazism, preaches the necessity of War for the very existence of the State and emphasises its inevitability. The culture that is being spread in countries under Fascist or Nazi domination is a War culture which glorifies the shedding of blood not for any quixotic principle but for the strengthening of the Corporate State.

As against that we have the philosophy of non-violence which has been preached with such vigour and sincerity by Mahatma Gandhi—its greatest apostle in the World to-day. The culture of India if it is eloquent of martial glory is also full of the application of the doctrine of non-violence in all its aspects. We are by tradition and upbringing a peaceful people and our culture in the main has evolved through gentle and shaded paths and there is very little of the blood and iron about it. If the Mahabharata describes an epic War it also enunciates the great philosophy of non-attachment—how a cultured man in the midst of War can retain his detachment.

That brings us to the next point whether the philosophy of the Bhagwat Gita is practi-

cal? Can culture remain unaffected by the clash of arms. Can a man of culture, to use the phrase of E. M. Foster, build for himself an ivory tower and retire to it with his soul intact although his hands may be steeped in blood. Charles Morgan discusses the same problem in the preface to his play "The Flashing Stream". He postulates that culture is the result of singleness of mind, the result of complete absorption in a single object to the exclusion of everything else. And he says that it may be possible figuratively for the artist to carry his brush and palette or the literary man his pen and paper even in the midst of the worst carnage.

But we must remember that culture can only bloom in freedom. Discipline and restrictions are alien to it. And these are the very essentials of War. Goodness and beauty cannot exist in an atmosphere of slaughter and mutilation. And at the end of it is the horrible futility of it all. Young lives who may have definitely contributed to the culture of the country cut short, young hopes extinguished long before their fulfillment.

Rupert Brooke the greatest and most authentic of English poets in recent times was killed in the last War before he had reached 30—with all that he might have contributed to

12

WHAT I READ

I THINK it might be truly said of all of us that the world is too much with us and we all want an escape—some ivory tower into which we could retire and forget the heat and dust of the life around us, discover what we really are and dream of fashioning the world nearer to our heart's desire. The more hectic and strenuous existence becomes the greater is the need for some form of escape—we want to run away from the din and bustle of every day life into some fairy kingdom of our own.

Escape takes different forms. Drink, Bridge, Golf. These are all pathetic and pitiable attempts of the world-weary mortal to escape from himself and his world. One of the best escapes in this sense are books.

I am not talking of books which one must read for one's living or for information. I am talking of those one may not read at all and which one only reads because one wants to and because they give one pleasure, joy and even happiness. Therefore, the qualities I expect of a book which I read under no compulsion

are that first and foremost it must give me pleasure — it must take me out of myself — it must either introduce me to an idealistic world to "charmed magic casements, opening on the foam of perilous seas in fairy lands forlorn" or if to the world of reality then a world where right and wrong are sharply distinguished and not blurred and indistinct as they often are in our own experience.

The books I read are very different from the books I *read*. We have phases and moods when certain books appeal to us — and with the passing of the phase or the mood the appeal ceases.

At School my first love was Mrs. Henry Wood and I believe I grew sentimental and maudlin over East Lynne. I have never been able to understand why or how students in India inevitably begin with Mrs. Wood. I suppose there is a Victorian stability about her character, which is supposed to be a good influence upon the developing mind of the student. Then I took to Dumas and Marie Correli. The thrill that Dumas gave me I can still recall. I saw the panorama of the history of France through the eyes of Dumas. I followed the fortunes of the Three Musketeers and D'Artagnan with a deep and almost a personal interest. Those were unsophisticated days and

life and experience, while they give us a critical faculty and a sense of discrimination, they rob us of that primitive pleasure in adventure and romance.

It is more difficult to explain my liking for Marie Correli. The other day I picked up a book of hers to try and see whether I could recapture my youthful enthusiasm for her. But I could not read more than ten pages and I was at a loss to understand how I could have spent hours and hours over "Thelma", "Temporal Power" and her other books.

The classics I also read. Scott and Dickens being my favourites with a preference for the latter. But I have always had a feeling that in India we read the classics too early and very often they are prescribed as text books and they are effectively spoilt for us for the rest of our lives. After seeing the brilliant presentation of "Pride and Prejudice" on the screen I read the master-piece of Jane Austen again — and I realized with a pleasant shock how much I had missed in the book when I had read it years and years ago.

Today I read in order to get away from the stark and precise reality of the law — and in order to feel that there are other considerations besides the legal ones which influence the actions of human beings. Naturally I do read a

great deal of literature. I think one of the most fascinating things in the world of letters is the wizardry of words. The beauty of the style has an irresistible attraction for me. I want the writer to convey to me his thoughts and ideas through the medium of words, not chosen haphazard, but which are polished and perfected with all the love and passion that an artist can devote upon his medium. Look at T. E. Lawrence's Seven Pillars of Wisdom. For the magnificence of prose there are few books to equal it. Even in fiction I refuse to read a novel unless it is well written. The plot does not attract me. In a novel I want style, characterisation and psychological interest. Even when I read a detective story I read Dorothy Sayers, for she takes her calling seriously and does not forget that she is not there merely to give us the creeps but also to give us some aesthetic pleasure.

I like the long leisurely novels where one watches the gradual development of character. I have enjoyed every word of Galsworthy's Forsyte Saga and Soames and Fleur are as real to me as any of my friends.

Today the English novelists I read are Somerset Maugham, Priestley, Aldous Huxley and Charles Morgan. Maugham has perfected the art of short story writing. Priestley is a

good companion. Aldous Huxley is the most learned and scholarly of English novelists of today, but he carries his learning lightly. He is the greatest apostle of non-violence in England. In his books you find today a discussion of all the ultimate topics with which philosophy is vitally concerned. But there are few books which have created a greater impression on me than Morgan's Fountain and Sparkenbroke. No one today writes English with such a true and authentic artistic note in the English literary world.

I am very devoted to biographies and especially autobiographies. I like to read about a man laying bare his soul and telling us what life has done to him and with him. If you want to widen your sympathies and feel the call of humanity read that beautiful gem of a book Munthe's Life of San Michele. Haldane's autobiography tells you of a really great man, and how he achieved great things, and how philosophy stood by him when he was forgotten and neglected by his country for whom he had toiled and slaved.

Strong, silent men are not supposed to read poetry. It is felt that there is a touch of effeminacy about it. But I am neither one nor the other, and the rhythmic music of words expressing the most intimate experiences and the deepest convictions move me as much as

great music or great painting can. It is very refreshing occasionally to soar into the empyrean, borne aloft by the imagination of the poet and forget the daily routine and the drudgery of existence. I remember at Oxford someone reading to me the chorus in Atalanta from Swinburne and I can still recall how the sheer music of those words acted upon me like a heady wine. A friend, now dead, read to me many years ago in Bombay Dowson's Cynara. I did not know Dowson before and this poem was a revelation to me of what perfect rhythm can achieve. Symonds, the well-known English critic, considers this poem to be the greatest lyric in the English language.

I have always been fond of the theatre, and one thing that always drew me to London was the stage. One sees, within a narrow compass, the most complicated problems of life propounded and solved through the characters appearing on the stage all in the course of about three hours. Seeing a play and reading one are very different things. But there are dramatists who read just as well as they act. Among the moderns, Shaw and Somerset Maugham are two examples. I was reading the other day a collection of plays published by an American publisher which has received the Piltzner prize. This is a prize that is awarded every year to

the best play staged in America. There are plays of the last 30 years and it is interesting to note how manners and ideas have changed.

I must also refer to historical works. It might be said that these do not fall in the category of books I have indicated, because one reads history for information and knowledge and not for pleasure. But there are certain historians whose writings are as much literature as they are a record of solemn and serious facts. Gibbon's Decline and Fall of the Roman Empire is a source of perpetual pleasure. Open it anywhere, dip into it at any place, and it makes enthralling reading. The sonorous cadence of its sentences, the solemn sneer at men and gods, constitute one of the greatest literary and historical achievements of all times. Rosebery has written very little, but what little he has written has a sparkle on it of a polished gem. His "Last Phase" describing the exile of Napoleon, is a brilliant treatise showing what Rosebery could have achieved if he had sulked less and worked more. Among the moderns, Fisher has perfected a very fine style. His little book on Napoleon in the Home University Library is an astounding performance. He has summarised in a few pages the life and career of the most dynamic character the world has known. His recent History of Europe is

written with suave and cultured ease. I have always said to myself: if people write to give information to others why not do it in a pleasant and agreeable way? There are some who think that a good style detracts from the merits of a serious work and the more unreadable the book the more its value among the highbrow.

I can go on and on talking about books but my span of life here is only 15 minutes. There is one advice I would give you—Don't read trash. Don't pick up any book from a railway stall just to kill time. Time is too precious to be killed, and there is no limit to the number of great books wanting to be read. If you can eat and drink with discrimination why not cultivate the taste for this food for your soul. I feel sorry for those who do not eat this food at all or live on garbage.

One thing about books is that you have to share your pleasure derived from reading a good book with some one else. You want your friends to read it and experience the same pleasure. Talking to you about books this evening has given me great pleasure, because it has recalled to my mind some of my most precious memories. We are all going to grow old and boredom waits for us round the corner. There is no better insurance against boredom and old age than a love of books.

13

PROGRESS AND SOCIAL CONSCIENCE

13

PROGRESS AND SOCIAL CONSCIENCE

Ladies and Gentlemen,

IT gives me very great pleasure as Chairman of the Reception Committee to welcome to this City social workers and representatives of social service agencies from all over India. I consider it the proud privilege of Bombay to be the venue of the first session of this All India Conference of Social Work.

Social work in all its aspects has assumed vital and paramount importance since India achieved her independence on the 15th of August, because we must never allow ourselves to forget that one of the most cherished goals of free India is social justice. It is not enough that in free India men should be equal before the law and that evenhanded justice should be meted out by Courts of law. Nor is it enough that our political institutions should be democratic institutions and that we should conform to all the democratic principles — that men should be free, that there should be freedom of press, freedom of association and freedom of worship. It is equally important that there

should be social justice in this country if we are to justify our freedom and establish our claim to be a progressive nation prepared to be judged by the highest standards laid down by thinkers and public men all the world over.

What is social justice ? Every human being belongs to some society or other. It may be a primitive society or it may be an advanced society and as such he owes a duty to society and he owes a loyalty to society. He has to obey its laws and not only its laws but also its unwritten conventions. That is one side of the picture and unfortunately that is the side which is usually emphasized. It is apt to be forgotten that society in its turn owes a debt to every one who is its member. The Victorian ideal used to be the greatest good of the greatest number, but that ideal has now become a little tarnished and worn out. The ideal of to-day is that we must work for the greatest good of all members of society leaving out none from the all pervasive effects of social justice.

There are certain fundamental social rights to which every citizen is entitled. The first and foremost is his right to work. I am using the word "right" and not "duty", because every son of Adam has to earn his bread in the sweat of his brow and to that extent his duty is plain and simple. But there are thousands of able-

bodied men gifted with intelligence and talent for whom society can find nothing to do, however willing they might be to work, and it is this recognition of the right to work, which, to my mind, is the first principle of social justice. Every citizen is also entitled to be free from want. No society can furnish to every person luxury or comfort. Equally so, no society can refuse to a citizen those elementary rights which alone make it possible for a man to realise his manhood and not to sink to the degradation of beasts and animals. Every one is also entitled, while he remains a useful member of society, to feel that he has security, not security in many possessions, or in riches, or in the hoardings of a lifetime, but security in the thought that in his old age the labour and hard work that he has put in would give him deserving comfort and ease and that in the event of his being cut off in the prime of his life, his dependents would be looked after by society till they are in a position to be on their legs.

We are often prone to pass severe judgments on the failings and shortcomings of our fellowmen. In doing so, we often forget to what a large extent this is due to frustrations and maladjustments for which society is largely responsible. Our function, therefore,

should be not so much to judge as to understand, not to condemn but to abolish the cause of frustrations and to set right the maladjustments.

A clear cut distinction must be drawn between charity and social justice. When you give charity you are giving something to which the person receiving it is not entitled. It almost inevitably engenders in the mind of the donor a sense of superiority that he has done well in the eye of the Lord ; on the other hand, in doing social justice you are only paying society's debts to the person who is its creditor, and whether the debt is paid by the society as such or by individuals constituting the society, there is nothing more sanctimonious about the deed than the discharging of one's duty.

In our country in all communities we have had a very high sense of benevolence and charity ; munificent donations have been given to relieve poverty and distress and to advance education and other deserving causes. But unfortunately we have on the whole lacked a social sense. We have rarely thought in terms of society. Our thoughts have either run in communal grooves or if we are sufficiently broad-minded we have taken a humanitarian view. But underlying all this has always been that feeling that the poor and the downtrodden

deserve to be helped by those who are better off. We have never felt strongly that poverty, disease, illiteracy are all social evils which can be eradicated. In order to eradicate them the first step is to hate them passionately and to realise that these evils were not ordained by God but are man made and can be done away with by man.

Unfortunately—and I wish to be quite frank—both the great religions in India, the Hindu and the Muslim religions have inculcated a philosophy which has had the unfortunate effect of making men tolerate these evils. The Hindu with his theory of *karma* often believes that what a man suffers here is preordained and that he is born in this world for the sins that he committed in a past life. The Muslim with his belief in *kismat* equally believes that suffering, if destined, has to be gone through cheerfully and inevitably. This is the philosophy we have to fight against. There is nothing inevitable or sacred or ordained about poverty, disease or illiteracy. It is a comfortable and convenient philosophy, which, people to whom the Gods have been kind and who have been brought up in the lap of luxury, hug to themselves in order not to be reminded that millions of men in this country are living in the most abject poverty and in conditions

which are a disgrace to any civilised society.

One of the problems this Conference will have to tackle will be to what extent social service must be rendered by private effort and to what extent by the State. The doctrine of *laissez-faire* has already died a natural death. No one now suggests that it is not the duty of the State to redress social wrongs and social injustices. But in our country the task is so colossal that it is impossible to expect the State on the threshold of its nascent existence to undertake the gigantic work of being the sole dispenser of social justice which ultimately it must become. Therefore, for a long time to come there will always be need and pressing need for a host of individual social workers and private social agencies, and I am sure during its deliberations this Conference will consider how the work of these individuals and agencies should be co-ordinated so as to produce the best and most satisfactory result. I do not wish to suggest that the State has not even in the immediate future to play a very big part in doing social justice. No individual and no private agency can possibly have the funds or the organisation which are at the disposal of Government.

It is indeed a curious irony of history that when a country is waging war its patriotism

touches the highest level and people are prepared to pour out millions in the work of destruction and also more nobly in alleviating suffering which is caused by that very destruction; but when the country goes back to peace, somehow the tide of patriotism begins to run out and we have not the enthusiasm or the farsightedness to spend a hundredth of what we were prepared to spend on devising and forging devilish instruments of destruction.

For a long time thinking men in India have felt that our social conscience requires to be roused and attempts have been made from time to time to organise social work and put it on a sound footing. As early as 1889 we had the Indian National Social Conference with whose work the name of Mr. Justice Ranade will always be associated. That Conference went on for nearly 35 years. Then we had the Social Service Conference, the first session of which was held in Calcutta in December 1917 and its first President was no less a person than Mahatma Gandhi, one of the greatest social workers India or perhaps the world has produced. But the continuity of these Conferences has never been kept up and they seem to be more spasmodic than something with an internal strength which goes on growing and expanding. People with a sensitive social conscience have also

established in different parts of the country Seva Sadans and Seva Samitis and Social Service Leagues, but I am glad that the Tata Institute of Social Sciences in Bombay, one of the finest, if not the finest, institutions of its kind in India, ultimately gave a lead in the matter and called a meeting of various social welfare agencies in this City to organise an All India Conference of Social Work and this Conference, which I have the honour to address, is the result of that lead given by the teachers and alumni of the Tata Institute of Social Sciences. I sincerely hope that this Conference will succeed in drawing the attention of Government and of the citizens of this State to the many social ills from which India suffers and also in pointing out the ways and means by which conditions in this country can be ameliorated. I hope the work of the Conference will not end by merely passing resolutions and then breaking up to meet again after a year. The object of the organizers is to do something practical and concrete, not merely to arouse the social conscience, but to make both Government and individuals to work in their own respective spheres so that our free and independent India should not only boast of a political democracy but should become a country where her citizens can lead a good and happy life.

14

CRIME AND PUNISHMENT

14

CRIME AND PUNISHMENT

ONE of the most important functions that the State has to perform is to punish the citizen, who commits a breach of its laws. It was not always so. In the dawn of history an offence was not looked upon as a civic wrong. It was a private injury, which called forth a private vengeance. Blood fueds are still not wholly unknown. It required a certain development of man as a political animal before he realized that his sense of vengeance was best satisfied by the State meeting out the requisite punishment.

In its early beginnings the object of punishment by the State was mainly retributive. The State, in substance, took upon itself the role of the injured subject. It expressed the same horror and indignation and tried by devious ways to make the punishment fit the crime. It was by no means in the Dark Ages that in England people were boiled for poisoning and women were burnt for treason. The State being concerned for its own safety and the preservation of its laws, the idea of making

the punishment deterrent also came to the surface fairly early. The offender himself, unless in the process of punishment he had ceased to present any problem, had to be deterred from committing the offence again and the punishment was to serve as an example to other citizens who would also be deterred from defying the authority of the State and the majesty of the law.

But the reformative aspect of punishment occupied the field at a very late stage. That the offender was a human being with a soul to save and human dignity to safeguard was a conception too Uptopian and idealistic for the State to concern itself with.

The one important consideration, which is often lost sight of in the infliction of punishment and in the manner in which it is carried out, is that the prisoner should be so dealt with that when he leaves the prison, he should be able to lead the life of a good citizen. At present more often than not, prison spells civic death to the person who finds himself behind its bars. In the prison itself his spirit is broken, his dignity is undermined and his self-respect shattered. Outside the prison he is looked upon as an outcast, an object to be shunned and despised. Of course, these remarks do not apply to political prisoners. They did not

permit the prison to break them and when they emerged from it, far from being despised and shunned, became even Home Members so that they could use the knowledge gained by them as prisoners for the relief of those who are still serving out their sentence or who are being committed to prison in the ordinary course of judicial administration.

Certain reforms in prison administration must be immediately carried out if the object and purpose of punishment is clearly kept before the mind's eye. The object and purpose must be not so much the punishment of the culprit as his improvement and the prevention of further crimes.

The first thing to consider is the nature of the work done by the prisoner where the punishment involves the doing of labour. At present the work is uniform irrespective of the varying qualities and talents of the prisoners. Why should a prisoner not be allowed to work on something which he knows or which is suited to his education and upbringing or why should he not be taught a trade or vocation, which he might profitably practice when he becomes a free man ? And more important than this is the absolute necessity of paying a living wage to the prisoners, who do the work.

The position today is that a man comes out

of prison without a son to bless himself with. He stands at the prison gate and looks out upon a cold and unsympathetic world. No one is likely to employ him as he is a gaolbird. He has no time to look about him and do something about earning an honest livelihood as he has no means to hold out and have breathing time before he launches upon the struggle of existence. What is the result ? He is inevitably driven to seek the company of disreputable people and engage once more in illegal activities. If it is true that economic causes drive a man to prison in the first instance, it is even more true that even more oppressive economic causes send him to jail a second time and make of him a habitual criminal. If the wages that he earns are laid aside for him and given to him when his term of sentence is over, he can face the world with confidence. Money is not everything in the world, but it certainly goes a long way to contribute to a man's self-respect and dignity.

The other important question is the proper utilization of the leisure of the prisoner. He has to do work for a certain number of hours according to the prison regulations. What happens to those hours when the prison regulations do not lay down any set occupation ? Instead of throwing the prisoner upon his own

resources or upon the company of his fellow prisoners, the State should arrange that the prisoner might use his leisure hours more for the benefit of himself and of the community of which he continues to be a member.

Take for example this instance of, what I think is, extremely cruel treatment of the prisoners which obtains in Bombay prisons, and I believe, in other prisons in India. A prisoner is locked up in his own cell at 5 p.m. After that for all purposes he is in solitary confinement. He has nothing whatever to do. He is not given even a book or a newspaper. He is not allowed lights. His only company are his own thoughts—and they cannot be very pleasant ones.

One is compelled to ask cui bono? For whose advantage is this being done? Certainly not of the prisoner. Certainly not of the State. Its only justification is the old barbarous idea that things must be made as unpleasant for the prisoner as possible. It is difficult to see what harm would be done to the cause of discipline or the sacred principles of penology if the prisoners were given books and papers to read. I have known of cases where people have come out of prison nervous wrecks because they could not stand this enforced loneliness for hours and hours.

I would go further and suggest that lectures should be arranged and educative films should be shown in prisons. And why not? If the main object of punishment is to reform the prisoner too much cannot be done in this line. I agree that a prison should not be converted into a Club. But diehards are apt to forget that deprivation of one's freedom and submission to rigorous discipline is in most cases sufficient punishment. And I would here make an appeal in favour of making many of the prison rules less stringent whose only effect is to make the prisoner think that he has ceased to be a human being and has no longer any place in the world that is going on outside the prison walls. I am referring to rules about interviews, receiving and sending of letters. The prison can do no greater harm than to destroy human dignity. A prison does not deserve to exist if those who maintain it do not believe that its occupants can be reformed into becoming good and useful citizens.

I am not one of those who believe that everything good comes from Russia. Nor, on the other hand, do I believe that democratic countries have not much to learn from the various social experiments that are going on in that country. There is an admirable article by Mr. Laski in his latest book on the Law and

Justice in Soviet Russia. He points out that they are more concerned with prevention and cure than with deterrence or punishment. He also points out that as far as conditions make it possible, prison authorities in Russia try to secure to the prisoner a full and self-respecting life.

The author tells us that he met two men who while serving their sentence had qualified respectively as a lawyer and a chemical engineer in Moscow University. It should be the glory of any prison that its inmates should, on their return to the fold, lead the life of respectable and respected citizens. A prison stands as the embodiment of the sanction devised by the State for its laws. It should also stand as an emblem of the principle that a human being, however erring, can be reformed and that even a prisoner has self-respect, and though temporarily deprived of his freedom, his soul is not dead.

(A paper read before the Penal Reform Conference.)

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I THE ALL INDIA RADIO

1. THE ASSASINATION OF MAHATMA GANDHIJI (*Gandhiji Is No More*) broadcast on 2-2-1948
2. WHAT I READ—broadcast on 8-4-1941
3. INTERNATIONAL COURT OF JUSTICE—broadcast on 29-7-1947
4. MY WORKING FAITH—broadcast on 21-9-1944

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IV The Editor, THE POONA LAW COLLEGE MAGAZINE, for the address '*Duties and Rights of Free Citizens*' being the address on the occasion of the Silver Jubilee of the Poona Law Society, 1949

V The Secretary, BHARAT SNEHA-SAMWARDHAK MANDAL, POONA, for the article *Jawaharlal Nehru : A portrait* intended for a volume (hitherto unpublished) by them on the occation of Panditji's 60th Birthday Anniversary, 1949

VI Secretary, ALL INDIA CONFERENCE OF SOCIAL WORK for the address *Progress and Social Conscience*, which was the welcome address at their first session, held from 6th to 9th Nov 1947

VII The Editor, SOCIAL WELFARE, for the article '*War and Culture*'

VIII The Secretary, BOMBAY HISTORICAL SOCIETY for the address *Some Problems Connected with the Writing of Indian History* which was the Welcome Address on the occasion of the Indian Historical Congress, 10th Session, Bombay 1947

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